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THE IMPEACHMENT OF JUDGE SWAYNE.

Impeachment is the most extraordinary of all legal proceedings. It brings into play the most omnipotent of the attributes of popular sovereignty. By this tremendous and awe-inspiring exercise of power the people are able to control those of its servants who are in places of supreme executive or judicial power and are not amenable to the ordinary processes of the law.

Impeachment is a rare proceeding, and it is that fact that lends interest to the action of the congressional committee, which on March 21st voted to impeach Hon. Charles Swayne, United States District Judge for the District of Florida. The report of the house committee on the judiciary is carefully summarized by the Washington correspondent of the New York Sun as follows:

"Several cases of unlawful proceedings in contempt cases are cited. The first shows that Judge Swayne purchased property in litigation before his court. He announced from the bench that a relative had made the purchase, but later volunteered the statement that the relative was his wife. E. T. Davis and Simon Belden, attorneys interestsd, brought suit against Judge Swayne in the state court to recover the property, and for this Judge Swayne adjudged them guilty of contempt of court, and after some abusive remarks sentenced them to disbarment for two years, $100 fine each, and ten days in jail. The entire proceeding, the report says, shows that Judge Swayne was in collusion with the plaintiff's attorney, and that his action was high-handed, wholly unlawful, and a gross abuse of judicial power.

The second case of contempt was one of gross injustice, and the action of Judge Swayne drove an innocent man to suicide. W. H. Hoskins, an old man, was forced into involuntary bankruptcy by defrauding him of his property, worth $40,000, out of which he owed $10,000. A receiver was appointed, who took possession of some property belonging to Hoskins' son. Young Hoskins recovered it by force and Judge Swayne adjudged him in contempt of court, refused to accept a fine, and insisted upon imprisonment. The disgrace so worked upon the young man's mind that he committed suicide.

In summing up all the charges, the report says that upon the whole case it is plain Judge Swayne has forfeited the respect and confidence of the bar and people of his district; that he has so conducted himself as to earn the reputation of being susceptible to the malign influence of a man of notoriously bad character; that he showed himself to be harsh, tyrannical and oppressive; that he is continuously and persistently violating the law, and recommends that he be impeached for high misdemeanors."

It is evident that the charges thus made, while serious, are not such as would make defendant amenable to an action at law, and it is possible that if the truth of the charges is proven Judge Swayne will rely on that fact as a defense. The merit of this defense, however, has never been definitely decided.

The federal constitution says that "the president, vice president, and all civil officers of the United States shall be removed from office for, and conviction of, treason, bribery, or *other high crimes and misdemeanors*. In England, while there is some authority to the contrary, the rule is well established that no impeachment will lie except for a breach of the common or statute law, which, if committed within any county in England, would be the subject of indictment or information; while in this country the position of law writers and publicists is otherwise. See Cooley on Constitutional Law, 159; Opinion of the Court in the Matter of Marks, 45 Cal. 217. On the true status of the law, Mr. Walter Carrington, in his article on Impeachment in the American and English Encyclopedia of Law, says: "If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of the criminal law, then, as it is well settled that in regard to the national government there are no common-law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the constitution or for offenses declared to be crimes

by federal statute. This view has been maintained by very eminent authority. But the cases of impeachment that have been brought under the constitution would seem to give to the remedy a much wider scope than the above rule would indicate. In each of the only two cases of impeachment tried by the senate, in which a conviction resulted, the defendant was found guilty of offenses not indictable either at common law or under any federal statute; and in almost every case brought, offenses were charged in the articles of impeachment which were not indictable, under any federal statute, and in several cases they were such as constituted neither a statutory nor a common-law crime. * * * The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase "high crimes and misdemeanors" is to be taken, not in its common-law, but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave, political offenses, corruption, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to an indictment either at common-law or under any statute."

We shall follow the progress of the case against Judge Swayne with much interest, but do not desire to express an opinion on the merits of the respective positions of the prosecution and the defense, until the articles of impeachment have been sent to the Senate and Judge Swayne has filed his reply. No proceeding should be freer from partisan prejudice and excitement, nor should any legal proceeding be watched with a more jealous eye by the people than a proceeding for impeachment, lest the beneficent purposes of the constitutional provision be rendered nugatory by political chicanery or combinations.

NOTES ON IMPORTANT DECISIONS.

PHYSICIANS AND SURGEONS—WHETHER THE MAKING OF A FALSE SET OF TEETH IS A DENTAL OPERATION.—In England, as in many states in this country, there is a statute which provides that a person shall not be entitled to recover any fee or charge, in any court, "for the performance of any dental operation or for any dental attendance or advice," unless he is licensed. In the recent English case of Hennan & Co. v. Duckworth, 48 Sol. L. J. 411, recently before the high court, on appeal from a county court, the defendant was sued for a sum of money in respect of the supply to him of a set of false teeth and the fitting of the same, and other dental services. The plaintiffs were unqualified persons. The judge decided, however, that, although the statute was a defense to the part of the claim in respect to fitting the teeth, and the other services, the plaintiffs were entitled to recover the price of the set of teeth, as the making of such an article was not the performance of any dental operation, or otherwise covered by the section. On appeal, the high court upheld this decision.

In commenting on this decision, the Solicitor's Law Journal says: "On the wording of the statute it can hardly be doubted that the high court was right. 'Dental operation' must mean an operation of a surgical nature, an operation upon the person of the patient. The words cannot be stretched so as to include the manufacture of a set of artificial teeth; and if not, there is nothing in the statute to prevent any person from making, selling, or receiving the price of, such goods. This is certainly unfortunate, and most persons will probably take the view that was evidently taken in the high court, that the statute needs amendment. If the public needs protection from the surgical operations of unskilled persons, it just as much needs protection from the supply of false teeth by such persons. Just as much suffering and injury may be caused by a badly-fitting set as by a bungled extraction. The law against unqualified dentists needs strengthening."

MASTER AND SERVANT—IS THE MASTER LIABLE FOR THE DEATH OF SERVANT BY LIGHTNING?—Strange, indeed, would it be if the trend of judicial decision in this country and in England, did not finally establish a rule of law making all the rich and "bloated" employers in the world liable for all accidents that may happen to all the rest of us who happen to be employed by them. That this glorious day is not far distant is indicated by the recent English case of Andrew v. Failsworth Industrial Society, 48 Sol. J. 410, where it was held by the court of appeal that where a workman is killed by lightning because of his unprotected position, the master is liable to pay to the workman's widow compensation for her husband's death.

In commenting on this decision the *Solicitor's Journal* says: "An injured workman is entitled to compensation only when the accident is one 'arising out of, and in the course of the employment.' It is in general a comparatively easy matter to determine whether an accident happened in the course of the employment, but the courts have been often puzzled to decide whether

it arose out of the employment. As an example of an accident happening in the course of employment, but clearly not arising out of the employment, judges have frequently referred to the case of a man killed by lightning whilst engaged in his ordinary work. In fact, in Glasgow Engineering Co. v. Falconer, 38 Sc. L. R. 381, Lord Trayner specifically said: 'A servant engaged in a factory and struck by lightning in the course of his employment would have no claim to compensation.' Alas! however, for the value of such *obiter dicta!* Now the very point has been raised for decision. A man has been killed by lightning whilst engaged in his ordinary work, and the court of appeal has decided that his widow is entitled to compensation. The deceased was a bricklayer, who was working upon a scaffolding about 23 feet above the level of the ground, when he was killed. Expert evidence was given that such a position rendered the man much more liable to danger from lightning than if had been at work on the ground. It was argued for the employers that there must be some connection between the work and the accident, and the case of Armitage v. Lancashire and Yorkshire Railway Co. (1902, 2 K. B. 178) was cited. In that case a boy threw a piece of iron at another boy, missed him, and hit and injured a third boy while at his work. All three boys were in the same employment. The court of appeal held that the injured boy was not entitled to compensation, and the master of the rolls said that the accident did not arise from anything which by any stretch of language could properly be said to be incidental to the employment of either of the boys. Now, should the electric spark in the recent case be considered in the same light as the piece of iron in that case? The county court judge said 'No.' He held that the position which the man necessarily occupied in order to do his work was a position of danger; that the position was one of substantially abnormally increased risk, and that, therefore, the accident did in fact arise out of the employment, and the widow was entitled to compensation. The court of appeal refused to disturb this decision, and held that the evidence justified the county court judge's conclusion. The decision is probably right, and puts an end to the stock example of injury by lightning as an injury for which compensation cannot be awarded. If an injured workman's position renders him more liable than usual to danger from lightning, then, if he is injured by lightning, the accident is one arising out of his employment. The argument sounds good, but it is a strange innovation in the English law to make a man pay for an act of God."

INTERNATIONAL LAW—RIGHT OF ONE NATION TO PRIORITY BECAUSE OF FORCIBLE ATTACHMENT OF DEBTOR NATION'S PROPERTY.—Some legal decisions are of importance because of the amounts, others because of the principles involved. Though the amount involved in the case of the "Allied Powers" v. the "Peace Powers," recently decided by the international tribunal at the Hague, was small, the principle involved in the decision thereof is one of vital importance. In fact it would be difficult to select a legal question the decision of which would affect more closely the peace, the happiness and the progress of mankind.

The facts in the case are briefly these: Venezuela was indebted to several nations, and owing to internal revolutions she had not the money to pay these debts as they came due. Germany, England and Italy grew impatient and formed a coalition for the purpose of resorting to force in order to collect what they claimed was due them. Their combined navies proved superior to that of Venezuela, and, after blockading certain of her ports and bombarding others, their superior force induced the helpless republic to sign a protocol providing for the payment of their claims out of her customs receipts. At this point the United States intervened diplomatically and secured an agreement upon the part of all the creditors of Venezuela to submit their claims to arbitration and to refer to the international court at the Hague the question as to whether or not the allied powers should have a preference over the others in the payment of their claims. And it may not be out of place to stop long enough at this point to say that this triumph is among the most brilliant in American diplomacy. It increased the influence of the Hague tribunal and gave it an opportunity to establish a precedent which would be of such usefulness to the nations of the earth as to make them debtors unto it for all coming time. That it did not avail itself of this opportunity was no fault of the United States.

It is evident from the above facts that the parties in interest before the arbitration boards at Caracas for the purpose of determining the amount of the claims where the several creditor nations on the one hand and Venezuela on the other; but at the Hague the parties were those nations which had resorted to force against Venezuela and those which had not. To Venezuela it made no difference whether the Allied Powers secured a preference in the time of payment or whether they did not, as 30 per cent of the custom receipts of two of her principal ports are to be applied to the payment of the debts in question until the same are extinguished.

As the judges in the court at the Hague do not hold office permanently as do the judges of most courts, it became necessary to select for this case three from the list of those already nominated by the various nations. The selection was made by the Czar of Russia. He chose M. de Martens, Count Muravieff and Henri Lammasch, the first two being Russians and the third an Austrian. Count Muravieff was made chairman, and it was he who delivered the opinion of the court.

The issue in the case before the court was clearly this: Is a resort to force such a meritorious thing that it gives to the nation or nations

resorting to it early a preferred standing in a court created for the purpose of maintaining international peace and justice? The Allied Powers maintained the affirmative, and the others, to wit: Holland, Belgium, Norway and Sweden, Denmark, Spain, Mexico, Venezuela, France and the United States maintained the negative of this issue. Never before has a lawsuit included so many important nations as parties litigant.

It is difficult to see how a court established for the purpose of furthering the peace of the world could decide this issue in the affirmative and thus put a premium upon violence. But such was the decision of the court. A glance at the make-up of the committee of judges will help us somewhat in understanding the decision handed down by them. It is impossible for men, even when sitting as international arbitrators, to divest themselves of inherited ideas and methods of thinking. The national ideas afloat in the atmosphere will soak in and become an indissoluble part of a man's mental equipment. It is therefore natural that both the Russians and the Austrian should bring to the bench full-grown convictions as to the efficacy of force as a factor in the government of mankind and not equally enlarged conceptions as to the rights of weaker nations.

Undoubtedly the judges had the right to decide in accordance with their own convictions as to the law and equities in the case. But it is unfortunate that they could not have reached a different conclusion. Therefore, it seems to us that it would have been better in the present instance to have selected judges from countries where the "mailed fist" is not quite so much an object of worship as it is in Russia and Austria. As the rules of the court render ineligible judges from those countries which are parties to the controversy, the number of countries from which judges could have been chosen was very much narrowed in this case, yet it would still have been possible to choose them from such countries as Switzerland, Greece or Portugal, *i. e.*, from countries which would have the least incentive to render a decision which would exalt brute force over peaceful methods as a means for settling international controversies.

The most encouraging thing in connection with the decision is the almost universal disgust with which it has been received; a disgust which is not an outgrowth of a sense of loss due to the postponement of the time at which certain claims shall be paid, for the amounts are so small that the financial loss is felt to be insiderable, but arises rather from the fact that a peace court should have placed its seal of approval upon the methods of the swashbuckler, and discourage in so far as it had the power to discourage a reliance upon the peaceful methods of diplomacy. Another encouraging feature is that, having agreed to submit the matter for arbitration, there is no disposition not to abide by the award, notwithstanding the almost universal disapproval of its terms. This acquiescence rests upon the general conviction that, even though a tribunal of justice may at times make mistakes, it is upon the whole preferable to the tribunal of arms.

Apologists for the decision attempt to justify it upon the ground of an analogy between the preferences given in courts of law to judgment creditors over ordinary creditors and the preference given in this case to the allied powers over the peace powers. At first blush this analogy seems sound. But let us examine it a little more closely. Whatever preference a judgment creditor has over his fellow-creditors he has secured not by forcibly seizing his debtor by the throat or by seizing or destroying or threatening to seize or destroy his property and thus compelling him to sign an agreement under duress, but rather by virtue of the fact that he has submitted his claim for judicial adjudication and has in advance of his fellow-creditors established the fact that he has a valid claim. Had the allied powers secured an award from an arbitration tribunal, while the other creditor nations were doing nothing, they could then with reason claim a preference in the payment of the amounts due them. They would then stand in a position analogous to that of judgment creditors. The giving of a preference as a reward for such a course of conduct would not be saying to the nations of the earth: If thy neighbor owe thee anything lose no time in proceeding against him with shot and shell lest some other nation anticipate thee and cause the payment of thy claim to be postponed until he shall have first been satisfied. In other words, it would not be promulgating the dangerous doctrine of shoot first and arbitrate afterwards.

If we were to admit that technically the law would permit of the decision rendered in the present case, we should still be forced to insist that the equitable rights of the parties demanded a different decision. The court evidently took the view that it was a court of law only and not a court of equity as well. This is most unfortunate and will be especially so if it is followed as a precedent for future decisions. For, if this is not to be a court of equity as well as of common law jurisdiction, what provision is left for equity jurisdiction in the field of international justice? If there is in municipal law need for a "correction of that wherein the law by reason of its universality is inadequate," there is certainly an equal if not greater need for it in international law. Had the equities of the case been considered, the court would not have held that the protocol of February 15, executed under duress, was a sufficient basis upon which to rest a decision, and particularly as one of the conditions upon which the case was submitted to the court was that said protocol should not be considered binding. That such is the fact appears from an impartial study of the negotiations.

Viewing the case as a whole, this much is certain: That if adherence to the rules of international law necessitated the decision rendered in

this case, then there is an imperative need of a conference of the nations to amend the law upon this point. For it is inconsistent and irrational to hold, as civilized nations do, that peace is a thing to be fostered and at the same time enforce a rule in a peace court which encourages a resort to war.—Edwin Maxey, in *Yale Law Journal*.

PROPRIETY OF DIRECT EVIDENCE OF INTENTION.

General Principles.—Since statutes have been passed, making the parties to a suit competent witnesses in their own behalf, many questions have arisen with regard to the propriety of their testimony upon various matters, which could not have arisen under the old practice whereby parties were incompetent to testify in their own behalf as to any matter. We may state in advance of the discussion, properly, that as a general rule one is entitled to testify as to what his intention or motive was under which he did a certain act.[1] It is very apparent that this motive and intent will become material in many cases, and upon its materiality rests the sole test of the admissibility of the evidence. It has been objected to this rule that "the secret motive and intention of men are known only to themselves and to God, hence it is necessary that the motive which governs human conduct and gives character to the acts of man should be inferred from surrounding circumstances." It is also objected that the permitting of such testimony would hold out a strong inducement to commit perjury. It has been held in answer to these contentions that the law requires the best evidence which can be produced and that the direct evidence is the best evidence, when it is obtainable. This direct evidence is far better than the inference of the motive and intention, from the circumstances. As regards the matter of inducing to permit perjury, that is for the legislature rathan than for the courts, and parties being witnesses and being allowed to testify, by the legislature, must testify subject to the same general rules as other witnesses.[2] Repeating, the general rule is then, that a party may, when his intention or motive is a material question in the case, state what his intention or motive was.[3] To illustrate, upon a question of fact as to whether a sale of personal property was made for the purpose of hindering, delaying or defrauding the creditors of the seller it is competent for the seller as a witness to testify directly as to whether he intended the sale to hinder, delay or defraud his creditors. The condition of a man's mind with reference to what he thinks, feels, believes and intends, and his motive is always a fact, and it is a fact which is often required to be ascertained both in civil and criminal cases, and only one person in the world has any actual knowledge concerning that fact, and that person is the one whose condition of mind is in question; and where he is a competent witness to prove such condition he may testify to the same directly.[4] Care must be taken, however, to differentiate these cases from those where it is attempted to introduce direct evidence of a party's intention so as to effect the rights of another party. This may not be done. The secret, undisclosed intention of one as a party to a contract is not admissible to affect the other's rights. Thus whether one intended to make an individual contract is improper.[5] It would be monstrous to permit any such rule as this to prevail. It would be contrary to all of the notions of the law that the secret, undisclosed intentions of one party should affect the rights of another party, or to permit, as in the Nixon case, testimony as to the private intention of a person when he executed a deed to change its natural and obvious meaning. This, however, as was stated in that case, that the intention of the party would be admissible to construe an ambiguous instrument, but would never be admissible to vary or contradict its terms, to hold otherwise would be to permit one party to make a contract. But, perhaps where the concurrence of two parties is material to be proved, while evidence of the intention of one cannot avail, this will not

[1] Oden Coal Co. v. Denden, 84 Ill. App. 190.
[2] Wheeldon v. Wilson, 44 Me. 1.
[3] Norris v. Morrell, 44 N. H. 395; Heat v. Parish, 104 Ind. 36; Frost v. Rosekrans, 66 Iowa, 405, 23 N. W. Rep. 395; Over v. Shiffer, 102 Ind. 191; Homans v. Corning, 60 N. H. 418; Boyce v. Gazon, 76 Ga. 79; Kruse v. Setfert, etc., Lumber Co., 108 Iowa, 353, 79 N. W. Rep. 118; Zimmerman v. Branon (Iowa), 72 N. W. Rep. 439; Brown v. Hickie, 68 Iowa, 330.
[4] Gordon v. Woodward, 44 Kan. 758, 25 Pac. Rep. 199. See, also, Gentry v. Kelly, 49 Kan. 32, 30 Pac. Rep. 186.
[5] Dillon v. Anderson, 43 N. Y. 231; Southern R. Co. v. Kincher (Ga.), 29 S. E. Rep. 816; Germaine v. Cen-

necessarily render it improper to prove the intention of the other.[6] Care must also be taken to confine the witness, when relating his intention, to that intention as a question of fact. He may not add to that statement the exercise of a judgment or state an opinion.[7] It is also improper for a party to be permitted to say what he would have done if a certain thing had happened, as that is immaterial.[8] It is said that the true test of admissibility of the evidence of motive or intention is the materiality of the motive or intention in giving character to the act.[9]

The Opposite Rule.—One state has stood squarely from the beginning in opposition to the great current of American authorities upon this question, and has declared that the intent, motive and purpose of a party to a suit, either in a civil or criminal case, is admissible when offered as direct testimony and may be only inferred from facts and circumstances.[10] The court has declared that since parties have been made competent witnesses in their own behalf, we have repeatedly held that they cannot testify to their uncommunicated motive or intention. Such motive or intention, when a material subject of inquiry, must be proved before parties will be allowed to testify in their own behalf. This is proved as an inferential fact to be drawn from dependent circumstances. Thus one accused of assault with intent to murder, or of larceny, may not testify as to his own motive, belief or intention, unless they were made known at the time the act was done.[11]

Apparently the Supreme Court of Texas has been on both sides of this question, but a careful examination of the authorities will demonstrate that the cases are distinguishable. In the case from Texas, which we cite above, that of Schmick v. Noel, it was held that the witness could not state that a note was given and received in good faith, because that was an opinion upon the facts, but other cases have shown not that evidence of intention is inadmissible, but that evidence of intention is inadmissible to show a frandulent intent, or that there was not a fraudulent intent on the ground that the question of whether or not the intention was fraudulent is a mixed question of law and fact. Thus, where a party was asked: "What did you sell out for, any other purpose than to pay your debts," the supreme court held that the answer was admissible, that it was not a question as to the fraudulent intention of the party.[12] Likewise where one of the vendees was asked as to his motive in making a sale, the evidence was held admissible.[13] The question of the motive of the party in doing the act, is admissible, but the question as to whether or not his intention is fraudulent, or as to whether or not he acts in good faith, is inadmissible, on the ground that the question is not of fact, but of law and fact. Upon this last proposition, we believe it will be shown later on that the court of Texas has decided contrary to the general rule, but we do not believe it can be said from these cases, that the courts of Texas have decided as a general rule that evidence of motive and intent is inadmissible, unless that motive or intent is a mixed question of law and fact.

The Intent of Another. — As a general rule one may not testify directly to what another intends at a certain time, or in a certain transaction, or with what motive he then acted.[14] This rule is, however, subject to the modification that an agent, when he must of necessity know his principal's intent, as in the case where it is claimed that the principal dedicated land for a highway, he may testify as to what that intention was.[15]

The Intent of a Corporation.—Although, as we have shown above, it is not generally proper for one to testify as to another's intention, nevertheless the managing officer or directors of a corporation, or the agent of such corporation may testify as to what the intention of the corporation was. Corporations can only act through agents and by means of

tral Lum. Co., 116 Mich. 245, 74 N. W. Rep. 644; Nixon v. McKinney, 105 N. Car. 23, 11 S. E. Rep. 154.

[6] Hale v. Taylor, 45 N. H. 405.

[7] Schmick v. Noel, 72 Tex. 1.

[8] Cowdry v. Coyt, 44 N. Y. 382.

[9] Phifer v. Irwin, 100 N. Car. 59, 6 S. E. Rep. 672.

[10] Fonville v. State, 91 Ala. 39, 8 So. Rep. 688; Seams v. State, 84 Ala. 410, 4 So. Rep. 521; Adams v. Thornton, 82 Ala. 360, 3 So. Rep. 320; Wheeles v. Rhodes, 70 Ala. 419.

[11] Burke v. State, 71 Ala. 377; Whizenent v. State, 73 Ala. 383.

[12] Sweeney v. Conley, 71 Tex. 543, 9 S. W. Rep. 548.

[13] Brown v. Lessing, 70 Tex. 544, 7 S. W. Rep. 783.

[14] Love v. Tomlinson, 1 Colo. App. 516, 29 Pac. Rep. 666.

[15] Spencer v. Peterson (Oreg.), 68 Pac. Rep. 519.

its officers, and the intent of the corporation is of course largely a matter of the intent of the officers or agents. Therefore, when persons who act for the corporation have such knowledge of its intention and purposes as to be able to testify in regard to them, their evidence is competent.[16]

Fraudulent Intent.—It is the general rule in nearly all of the states that one may testify as to what his intention was when he accepted goods in payment of a debt.[17] Or, that the grantor, in a conveyance claimed to be fraudulent as to creditors, may testify as what his intention was.[18]

It will be recalled that in discussing the opposite rule, we referred to the Texas cases and distinguished them, showing that they merely held that the inquiry was whether it was a mixed question of law and fact, and refused direct testimony as to whether or not the intention was fraudulent but permitted the party to say what his purpose was. In the Texas cases cited above under this paragraph, direct evidence of intent was permitted. We cannot understand how in any true sense the question of whether or not one acted with a fraudulent intent is a mixed question of law and fact. Parties know, as a matter of fact, whether they meant to defraud creditors or not, and it does not seem to be in any sense a question of law. What the result of the act was, whether it was fraudulent or not as to creditors, may possibly be construed to be a question of law under certain circumstances, but what the parties intended would seem clearly to be a question of fact. Suffice it to say, however, that Texas is distinctly out of harmony with the general rule of this country, if her decisions can still be read to mean that direct evidence of fraudulent intent, or of *bona fides*, is inadmissible.

Same Subject—Fraud on Parties.—Not only may one testify as to what his intention was, whether or not it was fraudulent as to creditors, but he may also testify as to whether or not he intended to defraud the party with whom he was doing business. Thus, whether or not the witness had any intention of deceiving or defrauding an insurance company was held to be a proper question,[19] or as to whether he intentionally concealed a fact from the insurance company's agent.[20] Likewise, where it was claimed that there was fraud in the sale of a boiler, it was held proper to inquire whether the vendor intened to give anything more than his opinion in regard to the condition of the engine and boiler.[21]

Criminal Intent.—It very frequently, even under our modern jurisprudence, where there are so many statutory crimes to which the old law of intent does not apply, becomes necessary to determine what was the intent, whether criminal or not, with which an act was committed, and it has been very generally held outside the state of Alabama, that such an intent may be testified to directly when the accused becomes a witness in his own behalf, in cases where the question of his intention is a material part of his defense.[22]

Intention as to Abandonment.—Another point to which the question of intention becomes important, is that of abandonment or waiver. Thus, it is often necessary to determine what the intention was when parties ceased for a time to reside upon what had theretofore been their homestead and the point which it is desirous to know about is, whether they intended to abandon the land as a homestead. Where this question has arisen it has been held proper to inquire what the intention was and whether or not it was intended to abandon the land as a homestead.[23] And the same

[16] Clark v. Marshall, 62 N. H. 498; Fred Miller Brewing Co. v. DeFrance, 90 Iowa, 395, 57 N. W. Rep. 959.

[17] State v. Mason, 24 Mo. App. 321; Wilson v. Clark, 1 Ind. App. 182, 27 N. E. Rep. 310; Byrne v. Reid, 75 Cal. 277, 17 Pac. Rep. 201; Angel v. Pickard, 61 Mich. 561, 28 N. W. Rep. 680; Wright v. Solomon (Tex.), 46 S. W. Rep. 56; Befford v. Penny, 58 Mich. 424, 25 N. W. Rep. 381; Starin v. Kelly, 88 N. Y. 418; Sperry v. Baldwin, 46 Hun, 120; Edwards v. Currier, 43 Me. 474.

[18] Campbell v. Holland, 22 Neb. 587; Sedgwick v. Tucker, 90 Ind. 271; Bidell v. Chase, 34 N. Y. 386; Seymour v. Wilson, 14 N. Y. 586; Thayer v. Phinney, 7 Allen (Mass.), 146.

[19] Commercial Bank v. Fireman's Ins. Co., 87 Wis. 297, 58 N. W. Rep. 301.

[20] Van Kirk v. Citizens' Ins. Co., 79 Wis. 527, 48 N. W. Rep. 798.

[21] Waugh v. Fielding, 48 N. Y. 681.

[22] Hamilton v. State (Ind.), 52 N. E. Rep. 419; Ross v. State, 116 Ind. 495, 19 N. E. Rep. 451; White v. State, 53 Ind. 595; Greer v. State, 53 Ind. 420; State v. Wright, 40 La. Ann. 589, 4 So. Rep. 486; Wohlford v. People, 148 Ill. 296.

[23] C. Altman & Co. v. Allen (Tex. Civ. App.), 33 S. W. Rep. 679; Glasscock v. Stringer (Tex. Civ. App.), 32 S. W. Rep. 920.

rule prevails when the question arises with regard to the abandonment of other rights.[24]

Married Woman's Intention.—It is also held improper as to a married woman's intention in signing a note when the question at issue is as affecting the validity of the note, to ask whether or not she intended to charge her separate estate.[25]

Intent to Aid Construction of Contracts and the Like.—As we noted above, when a contract or deed is ambiguous, it is proper for a party to testify what his intention was for the purpose of aiding the construction.[26] But the rule is otherwise when the contract or writing is not ambiguous, and as was seen in an earlier paragraph evidence, of intention is inadmissible to control a clear, unambiguous writing.[27]

Same Subject—Conveyances.—A party is also permitted to testify as to what his intention was in selling goods and as to whether he believed that he was only selling his interest in them.[28] But here the intention must not vary the legal effect of the transaction or the plain intent and purport of the paper.[29]

Intention Affecting Other Insurance.—When it becomes material to determine whether, when a party has effected insurance of property which is already insured under a policy providing that additional insurance shall avoid it, it has been sought to ask the insured which policy he intended to hold under when he took the additional insurance. It has been held, however, that such question is improper and that he may not, by any mere secret intent or determination affect other parties.[30]

Intention as to Dedication.—The question of intention also becomes important where it is to be determined whether or not a party dedicated lands for public use. Where the character of the transaction depends upon the intention, the party may testify as to what that intention was.[31] This is subject, however, to the exception that evidence of intention shall not be permitted when the manifest acts of dedication are thereby contradicted.[32]

Intention as to Usury.—It has been held proper for a party to testify as to what his intention was in reserving a certain sum upon a loan of money; whether it was usury, compensation for trust or compensation for the loan, and while his answer is, of course, not conclusive, it may be considered by the jury along with the other evidence.[33]

Intention as Determining Whether or Not a Contract is a Gambling Contract.—In harmony with the general rule that one may tell what his intention was, it may be asked, where a transaction in the case shows a purchase and sale of grain, whether or not the intention and understanding of the party was that the grain was or was not to be delivered.[34]

Intention as to Fixtures.—It has often been said that the question as to whether or not the structure erected on land is designed to be permanent and a fixture, depends upon the intention with which it is erected. In spite of this fact the courts have held that the intention with which it was built may not be testified to directly, since it is said that whether or not it is a fixture cannot depend upon the secret and undisclosed intent of the person who built it.[35] Thus it will be seen by reference to the cases that have held that contracts may not be varied, or rights of others affected by secret, undisclosed intention, is in harmony with the general rule which forbids the voicing of such intent to affect the rights of other parties.

Intention as to Residence.—Akin to the question of abandonment which depends upon intention, is that of residence. The question of a party's domicile, or whether or not he resides at a certain place, is largely a question of what he intends, and it has, therefore, been held proper to ask him, when it becomes necessary to determine where his residence is, as when

[24] Bartley v. Phillips, 179 Pa. St. 175, 36 Atl. Rep. 217.

[25] Union Stock Yard Nat. Bank v. Coffman (Iowa), 70 N. W. Rep. 693.

[26] Nixon v. McKinney, 105 N. Car. 223, 11 S. E. Rep. 154.

[27] Union Mut. Life Ins. Co. v. Buchanan, 100 Ind. 63; Kopeland v. Sullivan Sav. Inst., 90 Iowa, 744, 57 N. W. Rep. 617.

[28] Pitts v. Elser, 7 Tex. Civ. App. 47, 32 S. W. Rep. 146.

[29] Burlingame v. Rowland, 77 Cal. 315, 19 Pac. Rep. 526.

[30] Gale v. Belknap Ins. Co., 41 N. H. 170.

[31] Biddinger v. Parish, 76 Ind. 244.

[32] Columbus v. Dahn, 36 Ind. 330.

[33] Thurston v. Cornell, 38 N. Y. 281; Davis v. Marvine, 11 App. Div. 440, 42 N. Y. Supp. 322.

[34] Dwight v. Badgley, 14 N. Y. Supp. 498.

[35] Wadleigh v. Jandrin, 31 N. H. 512.

the question of his right to vote is at issue,[36] what his intention or motive is as to residence.[37]

At the close of our discussion, then, we arrive at the general rule that the intention or motive of a party, when material to the controversy, are questions of fact, and, if unambiguous terms in a contract or the rights of others, who depend upon visible acts, are not involved, may be testified to directly by the party whose intention is the subject of the inquiry.

And this, if we admit the propriety of the legislative power authorizing parties to testify, is a valid and just rule. The law, with sufficient reason, requires the production of the best evidence of which the situation admits. The best evidence, therefore, of the party's intention should be admitted, and that best evidence must necessarily come from one who knows most about the intention. Facts and circumstances are certainly not as good, whatever may be the relative probability as to veracity.

The very fact that this question of intention is one which is difficult to answer is a reason why the one who knows most about it should be permitted to tell what he knows, and requires that the pains and penalties of perjury should be visited with the same rigor upon the false witness to intention or motive as upon a false witness to a fact or conduct visible to ocular sense. The jury are still permitted to determine the case from all the evidence, and are not in any sense bound by what he says his intention was; what he says is to be considered with the other facts and circumstances. If these show that he testified falsely, when he said he had a certain intention, then his testimony ought to be disbelieved, but if no discredit is thrown upon his testimony and he is a proper witness, there is clearly no impropriety in believing what he says his intention was.

COLIN P. CAMPBELL, L. L.M.

Grand Rapids, Mich.

[36] Lombard v. Olliver, 7 Allen (Mass.), 155.

[37] Cushing v. Friendship, 89 Me. 525, 36 Atl. Rep. 1001. *Contra:* Baldwin v. Walker, 91 Allen, 428, 8 So. Rep. 464.

ALIENS—SUFFICIENCY OF EVIDENCE IN ENFORCEMENT OF CHINESE EXCLUSION ACT.

ARK FOO v. UNITED STATES.

United States Circuit Court of Appeals, Second Circuit, February 23, 1904.

Where an emigration commissioner's determination rejecting the evidence of citizenship in a proceeding for the deportation of a Chinese alien on the ground that he did not believe the testimony that the defendant was only 29 years of age was affirmed by the district judge, and there is nothing in the record to show that the commissioner's conclusion as to defendant's age was incorrect, the ruling will be affirmed.

Where a witness to the citizenship of an alleged Chinese alien was not impeached or discredited, but was clear and straightforward, and no criticism was made with regard to the same by the commissioner, and the alleged alien was not requested to be sworn in his own behalf, his failure to offer himself as a witness was not a sufficient reason for ordering him deported.

COXE, Circuit Judge: In the case of Ark Foo and Ark Toy the commissioner states his reason for rejecting the evidence of citizenship offered in their behalf as follows:

"The two defendants were in court and the witness swears that the defendant Ark Foo is twenty-nine years of age. I was satisfied from said defendant's appearance that he was certainly over forty years of age, and therefore placed no reliance in the witness' story."

The district judge held that the commissioner's determination in this regard should not be disturbed on appeal. We concur in this ruling. There is nothing in the record to show that the conclusion as to Ark Foo's age was incorrect. At the argument a photograph of Ark Foo purporting to have been taken in December, 1903, was handed to the court. Even though we were permitted to consider this photograph it proves nothing that enables us to say that the commissioner was wrong in his conclusion that Ark Foo is over 40 years of age. To the commissioner is delegated the duty to determine, in the first instance, these questions of fact, and if it were perfectly apparent to him, as he says it was, that the appellants' witness had falsely stated the age of one of them the commissioner was justified in rejecting the entire testimony.

In the case of Hoo Fong and Lee Cheong Ging the commissioner declined to give weight to the testimony of the appellants' witness, called to establish their citizenship in the United States, because he was utterly unable to state any facts concerning the village of Martinez, where it is alleged the appellants were born and where the witness testified he lived for 18 years. The only events which he recalled with certainty during this long period were the births of the appellants. In answer to the question, "What is your business?" he answered, "Do odd jobs and loaf." He was evidently a worthless individual and because of the inherently improbable nature of his story the commissioner disregarded his testimony

The district judge agreed with the commissioner and we are convinced that this court should not disturb these findings.

In the case of Jung Man an entirely different proposition is presented. A witness was called who established without contradiction the citizenship of the appellant. The witness was not impeached and there was nothing in his testimony to discredit it. It was a clear, straightforward statement. The commissioner makes no criticism of the testimony or of the witness. He does not suggest that the testimony is unsatisfactory or contradictory, or that there was any point requiring explanation. Neither he nor the district attorney requested the appellant to be sworn, as was done in *Ex parte* Sing, 82 Fed. Rep. 22, and in the recent case of United States v. Leung Shue, 126 Fed. Rep. 423. There can, therefore, be no escape from the conclusion that the commissioner would have accepted the appellants' testimony and would have ordered his discharge were it not for the fact that he failed to take the witness stand. The logical deduction from this ruling, stated bluntly, is that after a Chinese person has proved himself a citizen and entitled to remain in the United States, the commissioner may conclude that he is not a citizen and that he must be deported simply because he was not sworn as a witness; and this, too, in a case where no one requested him to be sworn and where he could have no personal knowledge of the facts in controversy. We are confronted with the naked question, where a Chinese person seeks to enter the United States on the ground that he is an American citizen, and has established his citizenship by unimpeached testimony, does his failure to be sworn constitute a sufficient reason for ordering his deportation? It is difficult to understand upon what theory the affirmative of this proposition can be maintained. Of course, numberless cases have arisen, and may arise in the future, where the failure of the defendant to testify may throw suspicion of the gravest character upon his defense as where, for instance, his own declarations that he was born in China are placed in evidence against him. But the case at bar is not embarrassed by any complications of this character. The crucial question was whether or not the appellant was born in the United States. From the very nature of the issue he could have no positive knowledge upon this point. Necessarily his testimony must have been hearsay. The record shows that he was born in Albany, Or., twenty-six years ago and that he left the United States and returned to China when he was 13 years of age. It is, therefore, quite apparent that he could have given no evidence which would have thrown any light upon the time and place of his birth, and yet the fact that he stood mute is the sole reason for his deportation. Indeed, the district attorney quotes with approval the language of a reported case to the effect that the claim of a Chinese person that he is entitled to citizenship "must be substantiated by better testimony respecting his birth in the United States than that of himself, based solely upon what his parents told him and the hearsay testimony of other witnesses." The commissioner says that a boy of 13 would be able to state "innumerable things with reference to his life in this country, the house and village where he lived and his voyage back to China, which would materially assist the court in arriving at the truth." Just what these things are is not apparent, especially when it appears that Albany is a "small town with no names or numbers to the streets." As to the voyage it was in all probability as eventless as those taken by others of appellant's countrymen. It is undoubtedly true that a shrewd cross-examiner might have involved appellant in contradictions upon these collateral matters, but we see no reason why he should voluntarily subject himself to such an ordeal. If the rule contended for be sustained, the defendants, in cases like the one at bar, will find themselves confronted by a dilemma which impales them upon one horn or the another. Whether they testify or fail to testify the result is the same—deportation. In United States v. Leung Shue, *supra*, the case was stronger for the government, in one respect at least, than the case in hand, for the reason that the district attorney requested the defendants to take the stand in their own behalf, which, by the advice of counsel, they refused to do. The judge there clearly states the rule as we understand it to be. He says:

"They (the defendants) have proved their case by a credible and credited witness, and there is neither law nor reason for requiring defendants to take the stand and submit to examination in such a case upon pain of deportation."

See, also, United States v. Hung Chang, 126 Fed. Rep. 400, 405.

We think the commissioner should have discharged the appellant.

It follows that the decision in the case of Ark Foo and Ark Toy and in the case of Hoo Fong and Lee Cheong Ging must be affirmed.

In the case of Jung Man the decision is reversed and the case is remanded to the district court with instructions to discharge the defendant.

NOTE—*Proceedings for Deportation Under the Chinese Exclusion Acts.*—To happen to be a Chinaman is no crime. That has been solemnly determined by the federal courts in construing the Chinese Exclusion Acts. Therefore, a proceeding to deport a resident of the Celestial Kingdom for having the presumption to visit this country is not a criminal trial. It is a special statutory proceeding to determine one fact—has the defendant the proper qualifications or credentials that entitle him under the act of congress to remain in this country. Fong Yue Ting v. United States, 149 U. S. 698; *In re* Chow Goo Pooi, 25 Fed. Rep. 77; The Haytian Republic, 57 Fed. Rep. 508; *In re* Sing Lee, 54 Fed. Rep. 334; United States v. Wong Sing, 51 Fed. Rep. 79; United States v. Wong Dep Ken, 57 Fed. Rep. 206; *In re*

Ng Loy Hoe, 53 Fed. Rep. 914; United States v. Hing Quong Chow, 53 Fed. Rep. 233. Therefore, a Chinaman defendant in such a proceeding cannot call for a jury under the provisions of the constitution. *In re* Sing Lee, 54 Fed Rep. 334; *In re* Tsu Tse Mee, 81 Fed. Rep. 562; *In re* Chow Goo Pooi, 25 Fed. Rep. 77. It is humorous, sometimes, to note the effort which is made to keep these proceedings out of the category of criminal proceedings and yet justify the detention and imprisonment of the defendant pending the hearing. Thus it was held that such *detention* was only a part of the means necessary to give effect to the act, but was not imprisonment in the legal sense. Wong Wing v. United States, 163 U. S. 235. And in another recent case it has been held that while the proceeding is special and statutory, it is analogous to a criminal action in the respect that the machinery is criminal.

It is evident that the above confusion was not calculated to find permanent lodgment in the law. So that when that provision of the Geary Act which provided for the imprisonment at hard labor of a Chinaman convicted of being unlawfully in the United States, came before the supreme court, that court held such provision was an open violation of the constitutional right of trial by jury. Wong Wing v. United States, 163 U. S. 235. And in the case of *In re* Ah Yuk, 53 Fed. Rep. 781, it was held that a United States commissioner, while he has authority, in a summary proceeding under the Chinese Exclusion Act, to order the deportation of a Chinaman found to be unlawfully within the United States, has no jurisdiction to order him to be imprisoned at hard labor for thirty days prior to the time fixed for his deportation.

Another nteresting point in the proceeding for deportation of a Chinaman, is the validity and operation of the rule throwing the burden of proof on the defendant to prove his own case affirmatively. This, of course, is contrary to every rule of criminal procedure. But it has been held that congress has the power, under its power to exclude aliens, to prescribe a rule of evidence to govern proceedings for their deportation when they come or remain uninvited and contrary to express prohibition. United States v. Wong Dep Ken, 57 Fed. Rep. 206; Fong Yue Ting v. United States, 149 U. S. 698. But it has been held that a Chinese person who is shown by uncontradicted evidence to be entitled to remain in the United States, cannot be deported because of his refusal to be sworn to testify at the request of the prosecution. *Ex parte* Sing, 82 Fed. Rep. 22. In this case the court gives an interesting expression of its views on this question: "But it is said that the act of 1892 is political and not criminal in character and that the provision for imprisonment at hard labor is unconstitutional. The decisions upon this question are not in accord, and it is unnecessary to decide it, for, upon the facts here, the presumption, assuming one to exist, is not sufficient to overthrow uncontradicted testimony and furnish the only foundation for the judgment. If something had occurred to discredit the testimony offered on behalf of the petitioner, if there had been a conflict upon the facts, if some witness had sworn to a circumstance which called for explanation from the petitioner, if the commissioner had intimated that, for any reason, he did not credit the petitioner's witness, the rule might be different. But the judgment of the commissioner, in effect, declares that after a Chinese person has proved himself a citizen of the United States, unless he goes upon the witness stand at the request of his prosecutors, the court will find that he is not a citizen and must be deported. I am familiar with no such rule of evidence and no authority has been cited warranting such a course. If not a criminal statute, the act of 1892 is, concededly, a most drastic and summary law. Its machinery should not be set in motion by straining the evidence so as to convict those who, because of their ignorance of our language and institutions are peculiarly helpless and unable to protect themselves. It is one of the safeguards of our organic law that no one shall be compelled to incriminate himself, and the courts have gone to the greatest lengths in enforcing this principle by a broad and liberal interpretation. It has never been construed in a narrow or illiberal spirit or relaxed so as to endanger civil freedom or oppress one, no matter how lowly, whose liberty is threatened. A Chinese person is entitled to demand that the judgment of deportation against him shall be based on legal evidence."

JETSAM AND FLOTSAM.

THE LAW AS TO TREASURE TROVE.

What appears to be the first reported controversy in this country over the possession of "treasure trove" arose recently in Oregon. Two boys while engaged in clearing out a hen-house on defendant's premises unearthed a rusty can containing $7,000 in gold coin. They exhibited their find to defendant, who took possession and bestowed a gratuity of five cents a piece upon the discoverers. The latter, however, subsequently sued in trover and the court supported their claim to the possession, applying the ordinary common law rule which sanctions the retention of lost property by the finder as against everyone but the former owner, Danielson v. Roberts (1904, Oreg.), 74 Pac. Rep. 913.

General jurisprudence distinguishes clearly between property which has been lost, *i. e.*, casually and involuntarily placed beyond the control of the owner, and treasure trove which is defined as an object of value which has been hidden for a very long time so that the owner is at present unknown. The former class of property has an owner in whose interest the finder is allowed to assume possession, while treasure trove is placed in the category of ownerless things to which an original title may be acquired on the principle of occupation. Early Roman law bestowed title to the whole hoard upon the finder. Emperor Hadrian introduced an equitable modification, which has been incorporated in the present codes of France, Germany, Spain and Louisiana, to the effect that one-half of the treasure should go to the owner of the place of discovery. But if the discovery be the result of deliberate search the land owner is entitled to the whole, except in Germany where the element of accident is not a condition of the finder's right. The doctrine seems to be deemed of some importance on the continent and has been fully worked out in relation to the rights of mortgagees, lessees, tenants in common and defrauded vendees. See La Grande Encyclopedie—Title Tresor.

Under the influence of the feudal system both in England and on the continent the title to treasure trove was held to vest in the lord of the soil. Bracton Bk. 3, T. 1, 2 ch. IV; Grotius, Bk. 2 ch. 8, § 7. On the continent (Bk. 2, ch. 8, § 7), the Roman rule later came to prevail; but in Great Britain the right to

treasure trove established itself as a prerogative of the king and as such it exists down to the present day. Attorney-General v. Trustees of British Museum (1903), 2 Ch. 598. There is no decided case in this country recognizing that any of our commonwealths have succeeded to this prerogative right. The prevailing feeling seems to pronounce against it though the penal code of New York makes it a misdemeanor "to conceal or appropriate lost treasure belonging to the state by virtue of its sovereignty." 2 Kent Com. 358. It is still an open question therefore whether an individual in this country can retain treasure trove against the state. There has been, however, a radical statutory development on the subject of the disposition of lost property. American common law accords the possession of this to the finder, regardless of the place where it may be found. Bowenv. Sullivan (1878), 62 Ind. 281; Durfee v. Jones (1877), 11 R. I.588. But the typical state code directs the finder to turn the article over to a local official under penalty of forfeiture of double value. If after advertisement no claimant proves within a year the owner's title is divested and goes in California, Missouri, Indiana and Montana to the finder; in Connecticut, Illinois, Iowa, New Hampshire and Vermont to the county, and in Maine, Massachusetts, Michigan, Oregon, Washington and Wisconsin one-half to the county and one-half to the finder. Such a statute being against common right will be strictly construed and has been held not to apply to property voluntarily hidden away. Sovern v. Yoran (1888), 16 Oreg. 269. Treasure trove then is not governed by these code provisions and in a state like Connecticut, lost goods may be claimed by the county while treasure trove may not be. In the principal case where the question was simply as to the right to the possession as between the parties, the distinction between property that has been lost and treasure trove is properly entitled to little weight. No Anglo-Saxon court would declare a division of the spoil, and the analogy of lost property is close enough to secure the finder in his possession. But were the issue to arise between the finder and the state the distinction might be pivotal. There is a solid distinction in legal logic and tradition between property in the two situations, an appreciation of which would furnish the finder of treasure trove in any jurisdiction with a defense to proceedings instituted by the state unless the court found that lost treasure under our political system is to be regarded as a part of the state revenue.—*Columbia Law Review.*

BOOK REVIEWS.

GOULD AND BLAKEMORE ON BANKRUPTCY.

No subject is more important to the commercial lawyer than that of bankruptcy, nor is any subject, at least at the present time, more fluctuating. The "latest" cases and the "latest" text books and digests are the only books that hold the confidence of the commercial lawyer. It may, therefore, be expected that the new annotated edition of the bankrupt act by John M. Gould and Arthur W. Blackmore will jump into instant popularity, not only because of the importance of the subject matter, but also because of the ability of the authors.

This manual of bankruptcy is based upon the annotation of the United States Statutes in the third volume of Gould & Tucker's Notes thereon, recently issued. The present annotation is, however, much amplified and extended, and includes numerous very recent federal and state decisions since that annotation was prepared. The decisions upon the Bankruptcy Act of 1898, here collected and reviewed, are of the greatest value, and this annotation of the act is believed to be the most recent, most thorough, and most useful treatment existing of that statute. The sections of the act and the amendments are printed in full, and under each section there is a statement of the points decided by the courts down to May 1, 1904. Although of moderate size, and inexpensive, this book really contains everything the practicing lawyer needs on this subject. It combines the information furnished by both a digest and a text-book of Bankruptcy Law and Practice.

Printed in one volume of 266 pages and bound in buckram. Published by Little, Brown & Company, Boston, Mass.

BOOKS RECEIVED.

Japanese Code of Civil Procedure (Revised Draft), From the Original Japanese Text. By J. E. De Becker, Solicitor and Public Interpreter. Yokohama, Japan. Kelly & Walsh. Review will follow.

HUMOR OF THE LAW.

An old negro who had business in a lawyer's office was asked if he could sign his name. "How is dat, sah?" "I ask," the lawyer answered, "if you can write your name?" "Wall, no, sah. I never writes my name. I jes' dictates it, sah."

Judge to witness—"Now, madame, I want you to distinctly understand that hearsay is not evidence. How old are you?"

Witness—"I don't know."

Judge—"Don't know!"

Witness—"I have no evidence of my age that is not hearsay."

A lawyer who was defending a suit for a widow, in the fervor of his zeal in his client's cause, exclaimed: "Gentlemen of the jury, a man who would be so mean as to sue a helpless widow-woman ought to be kicked to death by a jackass; and, gentlemen (here the eloquent counsel turned towards the judge), I wish his Honor would here and now appoint me to do the kicking."

"If we ratify that canal treaty, what are you going to do for something to talk about?" asked Senator Spooner of Senator Gorman.

"Oh," said Gorman, "Providence will provide."

"That," Said Spooner, "reminds me of the man out in Wisconsin who went to a revival, and was pressed to repent. He wavered for a time, and finally arose and said: —

" 'Friends, I want to repent, and tell how bad I have been, but I dassn't do it when the grand jury is in session.'

" 'The Lord will forgive!' the revivalist shouted.

" 'Probably he will,' answered the sinner, 'but he ain't on that grand jury.' "

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL—Another Action Pending.—Pending action held not cause for abatement of action subsequently brought.—Richardson v. Fletcher, Vt., 56 Atl. Rep. 981.

2. ACTION—Tax Title.—It does not follow, because a suit does not fall technically under the definition of some special action, that it should be dismissed.—Citizens' Bank v. Marr, La., 35 So. Rep. 780.

3. ADOPTION—Right of Inheritance.—The right of inheritance from adoption arises by operation of law, from the acts of the parties in compliance with the statute, and does not depend on or arise from contract.—Jordan v. Abney, Tex., 78 S. W. Rep. 486.

4. ADVERSE POSSESSION—Question for Jury.—The question of title to land claimed by a railroad as a right of way is for the jury, where there is evidence of adverse use of a part of it in a manner inconsistent with its use for right of way.—Hill v. Southern Ry., S. Car., 46 S. E. Rep. 486.

5. ADVERSE POSSESSION—Trespass to Try Title.—Where 10-year limitations were raised in trespass to try title, held to authorize admission of a parol lease from plaintiff to show occupancy as tenant.—Bonner v. Bonner, Tex., 78 S. W. Rep. 535.

6. ALIENS—Chinaman.—Written statement by a United States commissioner that a Chinaman was charged before him with being unlawfully within the United States, and was adjudged a citizen thereof, is not evidence of such adjudication.—Ah How v. United States, U. S. S. C., 24 Sup. Ct. Rep. 357.

7. ALIENS—Exclusion of Chinaman a Criminal Proceeding.—A proceeding for the exclusion of a Chinaman, in so far as the issue of his nationality is concerned, is to be regarded as a criminal proceeding.—United States v. Hung Chang, U. S. D. C., N. D. Ohio, 126 Fed. Rep. 400.

8. ALTERATION OF INSTRUMENTS—Explanatory Evidence.—The appearance of alterations in a deed held to justify the court in admitting explanatory evidence.—Kalbach v. Mathis, Mo., 78 S. W. Rep. 684.

9. ANIMALS—Maintaining Attractive Nuisance.—An owner of uninclosed lands is not liable for injuries to animals straying on the land from a highway, unless he maintains thereon a nuisance liable to attract such animals, to their injury.—Muir v. Thixton, Millett & Co., Ky., 78 S. W. Rep. 466.

10. APPEAL AND ERROR—Confession of one Assignment of Error.—A reversal, entered on a confession of one of the assignments of error, without any consideration of the others by the court, held not *res judicata* as to the other assignments.—Gage v. People, Ill., 69 N. E Rep. 635.

11. APPEAL AND ERROR—Exceptions to Admission of Evidence—A party objecting to evidence must state the ground of his objection, and on exception to admission is confined to the ground so stated.—Cowan v. Inhabitants of Bucksport, Me., 56 Atl. Rep. 901.

12. APPEAL AND ERROR—Explanatory Evidence.—Though, on appeal in equity, the court may review the evidence, it will defer somewhat to the opinion of the trial court.—Kalbach v. Mathis, Mo., 78 S. W. Rep. 684.

13. APPEAL AND ERROR—From Joint Decree.—A separate appeal by a single party from a joint decree against him and others cannot be maintained without notice to the other defendants.—Faulkner v. Hutchins, U. S. C. C. of App., Eighth Circuit, 126 Fed. Rep. 862.

14. APPEAL AND ERROR—Grounds First Alleged on Appeal.—A demurrer to a bill for want of equity held available, though made for the first time on appeal, where it could not have been obviated, if made at the trial.—Weed v. Hunt, Vt., 56 Atl. Rep. 980.

15. APPEAL AND ERROR—Judgment by Confession.—Where, after judgment by confession, the state petitions for suspensive appeal, making allegations of fraud which require evidence to be taken, the proper remedy is by an action in nullity, and the appeal will be dismissed.—Kiernan v. Jackson, La., 35 So. Rep. 798.

16. APPEAL AND ERROR—Jurisdictional Amount on Appeal.—Court of appeals held not to have jurisdiction of appeal from judgment for plaintiff for $170, and dismissal of improper set off for $95, under Ky. St. 1903, § 950.—Montgomery v. Montgomery, Ky., 78 S. W. Rep. 465.

17. APPEAL AND ERROR—Question Raised for the First Time in Appellate Court.—The objection that a question asked an expert witness was too meager in its statement of facts cannot be raised for the first time in an appellate court.—Wabash Screen Door Co. v. Black, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 721.

18. ASSAULT AND BATTERY—Failure to Take Forthcoming Bond.—Where an officer delivered property replevied to the plaintiff in a writ, without taking a bond from defendant to plaintiff, he could not justify his acts in seizing the property under the process.—McKinstry v. Collins, Vt., 56 Atl. Rep. 985.

19. ASSAULT AND BATTERY—Sufficiency of Evidence.—In a prosecution for aggravated assault, the evidence held not to sustain conviction.—Reese v. State, Tex., 78 S. W. Rep. 511.

20. ATTORNEY AND CLIENT—Compromise by Client.—Client could not affect attorney's right to contrac

value of services by compromising suit. — Cosgrove v. Burton, Mo., 78 S. W. Rep. 667.

21. BAIL—Forfeiture.—The statement of facts on appeal from a judgment in *scire facias* on a forfeited bail bond must show the judgment *nisi* was introduced in evidence.—Abbott v. State, Tex., 78 S. W. Rep. 510.

22. BANKRUPTCY—Claims of Assignee.—A claim by an assignee for creditors for expenses and services incurred before bankruptcy proceedings held not a debt or claim, which must be proved within one year after adjudication, in order to be allowed.—*In re* Levitt, U. S. D. C., E. D. Wis., 126 Fed. Rep. 889.

23. BANKRUPTCY—Chattel Mortgage.—In bankruptcy proceedings in New York, a creditor who has obtained judgment against the bankrupt after the adjudication is a necessary party to proceedings by the holder of an unfiled chattel mortgage on property sold by the trustee to recover the proceeds.—*In re* Beede, U. S. D. C., N. D. N. Y., 126 Fed. Rep. 853.

24. BANKRUPTCY—Concealment of Assets. — Evidence held insufficient to sustain a conviction of a bankrupt, under Bankr. Act July 1, 1898, of fraudulent concealment from his trustee of money belonging to his estate. —United States v. Lowenstein, U. S. D. C., E. D. Pa., 126 Fed. Rep. 884.

25. BANKRUPTCY—Dissolution of Attachment.—On an application of a trustee in bankruptcy to vacate an attachment against the bankrupt, it was no defense that under the laws of the state of the bankrupt's residence the property was exempt, and that, by reason of an insufficiency of assets over the exemption, there was nothing for distribution among creditors. — Thompson v. Ragan, Ky., 78 S. W. Rep. 485.

26. BANKRUPTCY—Exemptions. — Where a bankrupt claimed his exemption in his schedules, such claim must be regarded as in time, though the goods in the meantime have been sold by a receiver as perishable.—*In re* Coddington, U. S. D. C. M. D. Pa., 126 Fed. Rep. 891.

27. BANKRUPTCY—Fees of Referee. — A referee and trustee in bankruptcy held entitled to full commissions on the purchase price of property, subject to a lien, sold by the trustee with the consent of the holder of the lien; and this, though the property was purchased by the lienholder.—*In re* Sanford Furniture Mfg. Co., U. S. D. C., E. D. N. Car., 126 Fed. Rep. 888.

28. BANKRUPTCY—Intervention to Aid Involuntary Petition.—Where some of the creditors signing an involuntary bankruptcy petition were incompetent, the petition may be supported by the intervention of other creditors competent to sign the same.—*In re* Vastbinder, U. S. D. C., M. D. Pa., 126 Fed. Rep. 417.

29. BANKRUPTCY—Preferences.—The duty of the court in bankruptcy proceedings to annul or subrogate the trustee to the benefit of liens obtained against the bankrupt within four months before filing petition is not confined to liens creating preferences.—*In re* Baird, U. S. D. C., W. D. Va., 126 Fed. Rep. 845.

30. BANKRUPTCY—Proceeds of Liquor License. — The police commissioners of Boston having uniformly refused to recognize the validity of a mortgage of liquor licenses as against public policy, a court of bankruptcy, which is enabled to realize upon such asset of a bankrupt only by the consent and with the co-operation of such commissioners, will not allow the claim of a mortgagee to the proceeds of such a license after its sale by a trustee.—*In re* McArdle, U. S. D. C., D. Mass., 126 Fed. Rep. 442.

§ 31. BANKRUPTCY—Sale of Homestead. — A husband, after sale of homestead, held to have the right to give proceeds to his wife, and, on her investment of the same in other land, the property so acquired was not subject to subsequent debts of the husband.—Bohannon v. Clark, Ky., 78 S. W. Rep. 479.

32. BANKRUPTCY—Seizures Avoided.—A court of bankruptcy, having determined that property of a bankrupt was seized by an officer of a state court after filing of the petition by an abuse of process, has power to summarily order its surrender to the trustee or receiver in bankruptcy.—*In re* Weinger, Bergman & Co., U. S. D. C., S. D. N. Y., 126 Fed. Rep. 875.

33. BANKRUPTCY—Termination of Lease.—A tenant's discharge in bankruptcy held not to terminate the lease, unless the landlord re-enters or the trustee assumes the lease.—Witthaus v. Zimmerman, 86 N. Y. Supp. 315.

34. BENEFIT SOCIETIES—Proofs of Death.—Proofs of death of one insured in a beneficial association were unnecessary, where it denied all liability. — Weber v. Ancient Order of Pyramids, Mo., 78 S. W. Rep. 650.

35. BILLS AND NOTES—Allegations and Proof of Ownership.—In an action on a note by the original payee, who alleges an indorsement to a third person and by the third person back to her, a failure to prove the allegations is fatal.—Dunlap v. Kelly, Mo., 78 S. W. Rep. 664.

36. BILLS AND NOTES — Ownership of Note. — In an action on a note, the indorsements themselves held insufficient to prove the allegations as to ownership.—Dunlap v. Kelly, Mo., 78 S. W. Rep. 664.

37. BURGLARY—Evidence as to Tools Used in Gaining Admission.—Testimony in prosecution for burglary, as to tools used in gaining entrance to burglarized store, held admissible.—Perry v. State, Tex., 78 S. W. Rep. 513.

38. BURGLARY — Soliciting the Commission of the Crime.—In a prosecution for burglary, a requested instruction as to the acts of an alleged detective in soliciting the commission of the crime held properly refused.—State v. Chappell, Mo., 78 S. W. Rep. 585.

39. CARRIERS — Delay in Transporting Live Stock.—Time necessarily lost by a carrier in stopping cattle for food and rest, under a federal statute, should not be considered in computing alleged negligent delay.—St. Louis, I. M. & S. Ry. Co. v. Carlisle, Tex., 78 S. W. Rep. 553.

40. CARRIERS—Interstate Commerce as Affected by Continuity of Shipment.—Shipment of goods from sister state held to have lost its character as interstate commerce, so as to fall within jurisdiction of state railroad commission.—Gulf, C. & S. F. Ry. Co. v. State, Tex., 78 S W. Rep. 495.

41. CARRIERS—Jolt of Train Causing Injury to Passenger.—Passenger who leaves his seat before stopping of train cannot recover for fall resulting from its stoppage in usual manner.—Illinois Cent. R. Co. v. Jolly, Ky., 78 S. W. Rep. 476.

42. CARRIERS—Limiting Liability on Account of Negligence.—A common carrier cannot limit its liability for goods lost in shipment through its negligence by any regulation or any provision placed in its bill of lading, unless the same is agreed upon with the shipper or distinctly brought to his attention.—Doyle v. Baltimore & O. R. Co., U. S. C. C., W. D. Pa., 126 Fed. Rep. 841.

43. CARRIERS—Scalping Railroad Tickets.—A railroad company, which sold tickets with coupons to persons desiring to attend a convention, the tickets being nontransferable, held entitled to an injunction against persons acquiring the return portions of such tickets from the original purchasers and selling them to others in violation of the contract.—Kinner v. Lake Shore & M. S Ry. Co., Ohio, 69 N. E. Rep. 614.

44. CARRIERS—Wrongful Ejection.—A passenger is not bound by a rule of the railroad, of which she has no knowledge, requiring passengers to go by a direct route. —Illinois Cent. R. Co. v. Harper, Miss., 35 So. Rep. 764.

45. CHATTEL MORTGAGES—Private Sale by Mortgagee —Chattel mortgagee, selling goods at private sale, held liable for loss if goods are sold for less than best price obtainable. — First Nat. Bank v. Wright, Mo., 78 S. W. Rep. 686.

46. COMMERCE—Statute Pertaining to Sale of Trout During Closed Season.—Laws 1902, p. 487, ch. 194, § 141, prohibiting the possession during the closed season of trout taken outside the state, is void as an interference with interstate commerce, and not a proper exercise of

police power.—People v. A. Booth Co., 86 N. Y. Supp. 272.

47. CONSTITUTIONAL LAW—Hours of Employment in Mines.—Act March 23, 1901 (Laws 1901, p. 211), regulating hours of employment in mines, held not special or class legislation.—State v. Cantwell, Mo., 78 S. W. Rep. 569.

48. CONSTITUTIONAL LAW—Judicial Functions by Executive Officer —As the department of commerce and labor is charged by the constitution with the regulation of interstate and foreign commerce, including the coming of persons into the United States, congress may devolve on the officers of that department the power to determine the existence or non-existence of the facts on which the right to enter the United States depends.—*In re* Sing Tuck, U. S. C. C., N. D. N. Y., 126 Fed. Rep. 386.

49. CONSTITUTIONAL LAW—Qualification of Voters.—Const. art. 6, § 2, as amended in 1901, Laws 1901, p. 322, providing that one subject to poll tax shall not vote unless he has paid the tax, held not to require the receipt to be exhibited at the time of voting.—Stinson v. Gardner, Tex., 78 S. W. Rep. 492.

50. CONSTITUTIONAL LAW—Trading Stamps.—The giving of trading stamps in connection with a business is not illegal, as demoralizing to legitimate business.—State v. Dodge, Vt., 56 Atl. Rep. 983.

51. CONSTITUTIONAL LAW—Ultra Vires Contract.—An *ultra vires* contract is not protected by the clause of the federal constitution.—Westminster Water Co. v. City of Westminster, Md., 56 Atl. Rep. 990.

52. CONSTITUTIONAL LAW—Vital Statistics as Evidence.—Acts 1902, p. 49, No. 44, providing that public vital statistics and certified copies shall not be evidence, except of the fact of birth, marriage and death, held not unconstitutional as impairing vested rights.—McKinstry v. Collins, Vt., 56 Atl. Rep. 985.

53. CONTINUANCE—Failure to Subpœna Witness.—A continuance for absence of a witness was properly denied, where he had not been subpœnaed and no other effort had been made to secure his attendance.—Hosman v. Kinneally, 86 N. Y. Supp. 263.

54. CONTRACTS—Action to Avoid.—In a suit to avoid a commutative contract, where it appears that defendant has done all that the contract required of him, held an exception of no cause of action is properly sustained.—Wartelle v. Bradford, La., 35 So. Rep. 819.

55. CONTRACTS — Agreement to Leave Property by Will.—A contract between two persons, upon a valuable consideration, that one will, at his death, leave property to the other, is enforceable.—Jordan v. Abney, Tex., 78 S. W. Rep. 486.

56. CONTRACTS—Conditional Compensation of Expert Witness.—Contract with physician to testify as expert witness for 10 per cent. of plaintiff's recovery held illegal.—Laffin v. Billington, 86 N. Y. Supp. 267.

57. CONTRACTS — Implied Provision as to Architect's Decisions.—Where a contract did not provide that the architect's decision on any disputed question should be final and conclusive, a provision to such effect could not be implied.—George A. Fuller Co. v. B. P. Young Co., U. S. C. C. of App., Third Circuit, 126 Fed. Rep. 343.

58. CONTRACTS—Joint Tort Feasors.—Stipulations filed by attaching creditors in their individual suits held not a ratification of trespass committed by the other attaching creditors.—Paddock-Hawley Iron Co. v. Rice, Mo., 78 S. W. Rep. 634.

59. CONTRACTS — Pleading. — Where contract alleged was different from that submitted in issue, instruction that, if it was as alleged, the issue should be answered "Yes," held error.—Dickens v. Perkins, N. Car., 46 S. E. Rep. 490.

60. CONTRACTS—Public Printing.—Breach of contract between printers and newspaper publishers to bid only the maximum rate allowed by law on public work held to give party thereto no standing in court.—Pendleton v. Asbury, Mo., 78 S. W. Rep. 651.

61. CORPORATIONS—Contracts Ultra Vires.—A corporation held liable for the value of property received by it under a contract which was *ultra vires*.—Richmond Guano Co. v. Farmers' Cotton Seed Oil Mill & Ginnery Co., U. S. C. C. of App., Fourth Circuit, 126 Fed. Rep. 712.

62. CORPORATIONS—Nuisances.—Corporations held to have no greater privilege or right than a natural person to maintain a nuisance, in the absence of anything in its charter expressly granting it such right.—Powell v. Brookfield Pressed Brick & Tile Mfg. Co., Mo., 78 S. W. Rep. 646.

63. CORPORATIONS—Ownership of Stock of Another Company.—The fact that all of the stock of a boom company has been purchased by the stockholders of another corporation and is held for its benefit does not make the latter the owner of the property, franchise, or business of the boom company.—C. Crane & Co. v. Fry, U. S. C. C. of App., Fourth Circuit, 126 Fed. Rep. 278.

64. CORPORATIONS — Sale of Assets. — Stockholders, present at stockholders' meeting, held bound by the action of that meeting authorizing the sale of corporate property.—Carr v. Rochester Tumbler Co., Pa., 56 Atl. Rep. 945.

65. CORPORATIONS — Ultra Vires Note.—A contract made by a corporation and notes given pursuant thereto held *ultra vires* and void, as not connected with or incidental to the business for which it was organized.—Richmond Guano Co. v. Farmers' Cotton Seed Oil Mill & Ginnery Co., U. S. C. C. of App., Fourth Circuit, 126 Fed. Rep. 712.

66. COURTS—Cancellation of Notes.—The county court has jurisdiction to cancel an indebtedness, evidenced by a note secured by a vendor's lien, the amount of which is within its jurisdiction.—Hollis v. Finks, Tex., 78 S. W. Rep. 555.

67. CRIMINAL EVIDENCE—Articles Found in Another's House.—A confederacy or conspiracy not being shown, goods found in the house of another, also charged with the larceny, are not admissible against defendant.—State v. Drew, Mo., 78 S. W. Rep. 594.

68. CRIMINAL EVIDENCE — Confessions.—Confessions held admissible, subject to proper charge, where evidence conflicts as to whether they are voluntary.—Sanches v. State, Tex., 78 S. W. Rep. 504.

69. CRIMINAL EVIDENCE — Continuances for Absent Witnesses.—The story which witness would testify to being shown to be improbable, refusal of continuance for his absence held not error.—Dodson v. State, Tex., 78 S. W. Rep. 514.

70. CRIMINAL EVIDENCE — Credibility of Witness.—Where a conversation between defendant and witness as to stolen property was testified to, it was proper to charge as to the rules governing the consideration of defendant's statements.—State v. Chappell, Mo., 78 S. W Rep. 585.

71. CRIMINAL LAW—Irresistible Impulse as a Defense for Embezzlement.—Where a person indicted for embezzlement retained the intellectual power to perceive right and wrong, the fact that his will power was so impaired that he could not resist the impulse to do wrong is no defense.—State v. Berry, Mo., 78 S. W. Rep. 611.

72. CRIMINAL TRIAL—Absence of Counsel. — Where a criminal case is fixed by consent for a particular day, the court held authorized to have the case tried on the day fixed, the junior counsel for defendant being present.—State v. Gosey, La., 35 So. Rep. 786.

73. CRIMINAL TRIAL—Absence of Counsel.—Absence of counsel who has made no appearance in court held no ground for a continuance, where defendant is represented by counsel appointed by the court.—State v. Murray, La., 35 So. Rep. 814.

74. CRIMINAL TRIAL—Charging Jury as to Reasonable Doubt.—Charge on reasonable doubt as to whole case held sufficient, without charge as between degrees of murder and manslaughter.—Smith v. State, Tex., 78 S. W. Rep. 517.

75. CRIMINAL TRIAL—Method Pursued in Summoning Jurors.—Disregard of statutes as to summoning jurors

held not ground for new trial, in the absence of a showing of prejudice.—State v. Riddle, Mo., 78 S. W. Rep. 606.

76. DEATH—Fellow Servants.—In an action for the death of a member of a switching crew, evidence that the assistant yardmaster often reported the condition of the trains before they were moved by the switching crew held admissible.—Chicago & E. I. R. Co. v. Driscoll, Ill., 69 N. E. Rep. 620.

77. DEATH—Mental and Physical Suffering.—Under the Tennessee tatute allowing a recovery in actions for wrongful death for the physical and mental suffering of the deceased, all the circumstances showing his condition and treatment from the time of his injury until his death may properly be shown.—Wabash Screen Door Co. v. Black, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 721.

78. DEATH—Proximate Cause.—Plaintiff might recover for the death of his decedent, if a cause of the death was a disease accelerated by the negligent act of the defendant.—Meekins v. Norfolk & S. R. Co., N. Car., 46 S. E. Rep. 493.

79. DEATH—Remarriage as an Element in Mitigation of Damages.—In an action by a wife to recover for the wrongful killing of her husband, the remarriage of the wife cannot be considered in mitigation of damages.—Chicago & E. I. R. Co. v. Driscoll, Ill., 69 N. E. Rep. 620.

80. DEEDS—After Twenty-seven Years Presumed Genuine.—A deed regular on its face and regularly acknowledged held *prima facie* evidence of its genuineness, when assailed as a forgery 27 years after its execution.—Elliott v. Sheppard, Mo., 78 S. W. Rep. 627.

81. DIVORCE—Effect of Antenuptial Contract.—Antenuptial contract held not to contemplate divorce for husband's fault, nor to preclude wife, in event of such divorce, from obtaining permanent alimony, as provided for in V. S. 2691.—Carter v. Carter, Vt., 56 Atl. Rep. 989.

82. DOWER—Partnership Estate.—The wife of a member of a firm has no right of dower in partnership real estate until after dissolution, and payment of firm creditors, and adjustment of the equities between the partners.—Hauptmann v. Hauptmann, 86 N. Y. Supp. 427.

83. DRUGGIST—Sale of Liquor.—Pen. Code, 1895, arts. 455, 466, held not to prohibit sale of liquor on prescription under license, or of patent medicines and pills by one not a qualified pharmacist.—Watson v. State, Tex., 78 S. W. Rep. 504.

84. EASEMENTS—Conflicting Rights of Way.—Jurisdiction in equity to determine how conflicting easements of way across the same place shall be occupied is inherent, and protected by Const. art. 6, § 1.—West Jersey & S. R. Co. v. Atlantic City & S. Traction Co., N. J., 56 Atl. Rep. 890.

85. EMINENT DOMAIN—Condemnation Proceedings.—Assessment of damages in proceedings to condemn tract of land held not to cover owner's interest to center of adjoining street.—Shipley v. Western Maryland Tide-Water R. Co., Md., 56 Atl. Rep. 968.

86. EMINENT DOMAIN—Report of Commissioners.—The report of commissioners in condemnation proceedings may be set aside, if too large, but it cannot be increased, if too small.—Louisiana Western R. Co. v. Crossman's Heirs, La., 35 So. Rep. 784.

87. EQUITY—Award of Damages.—An award of damages incident to the enforcement of equitable rights cannot alone sustain the judgment in an equitable action, where plaintiff fails to establish his right to equitable relief.—Clark v. Smith, 86 N. Y. Supp. 472.

88. EQUITY—Clean Hands.—The maxim that "he who comes into equity must come with clean hands" means that plaintiff must not be guilty of reprehensible conduct with respect to the subject-matter of his suit.—Kinner v. Lake Shore & M. S. Ry. Co., Ohio, 69 N. E. Rep. 614.

89. EQUITY—Multiplicity of Suits.—That several lots of land are claimed under the same title will not give the court jurisdiction in equity to determine title, to avoid multiplicity of suits.—Burroughs v. Cutter, Me., 56 Atl. Rep. 649.

90. EVIDENCE—Admissibility of Letter.—Where part of a cross-examination is confined almost wholly to the contents of a letter written by defendant, on request by the defendant, the whole letter should be submitted to the jury.—Lombard v. Chaplin, Me., 56 Atl. Rep. 903.

91. EVIDENCE—Plaintiff Qualifying as Expert.—Where plaintiff was qualified to testify as an expert, the fact that he was a party to the suit did not disqualify him.—Standefer v. Aultman & Taylor Machinery Co., Tex., 78 S. W. Rep. 552.

92. EVIDENCE—Value of Property.—Cross-examination of a property owner, testifying to the sum to which the value of the property has been reduced by the proximity of a nuisance, as to whether he will take that for it and as to what they will take, is proper.—Eastern Texas Ry. Co. v. Scurlock, Tex., 78 S. W. Rep. 490.

93. EXECUTORS AND ADMINISTRATORS—Disposition of Sum Accrued from Penalties.—In the distribution of the funds of a succession, the sum accruing from penalties against the administrator must go to the heirs on whose share it has accrued.—*In re* Dimmick's Estate, La., 35 So. Rep. 801.

94. EXECUTORS AND ADMINISTRATORS—Final Accounting.—Legatee held not entitled to object to extra compensation paid executor after having acquiesced in final account.—Littell v. Hackley, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 309.

95. EXECUTORS AND ADMINISTRATORS—Right of Heirs to Enjoin Giving of Right of Way.—Where executors are about to convey without authority a right of way to a railroad through the lands of their testator, they will be enjoined at the suit of the heirs.—McClane v. McClane, Pa., 56 Atl. Rep. 996.

96. EXTRADITION—What Constitutes Fugitive from Justice.—Proof that defendant committed a crime in Ohio, and, when sought to be subjected to the criminal process of that state, he was found in New York, was sufficient to establish that he was a fugitive from justice.—*In re* Strauss, U. S. C. C. of App., Second Circuit, 126 Fed. Rep. 327.

97. FEDERAL COURTS—Bankruptcy.—Federal district court sitting in bankruptcy is without jurisdiction to try an adverse claim to personal property scheduled as a part of the bankrupt's assets.—*In re* Flynn & Co., U. S. D. C., E. D. N. Car., 126 Fed. Rep. 422.

98. FEDERAL COURTS—County Warrants.—An action can be maintained in a federal court by an assignee of county warrants payable to bearer, where he is a citizen of another state, regardless of the citizenship of the original holders.—Board of Com'rs of Kearny County, Kan., v. Irvine, U. S. C. C. of App., Eighth Circuit, 126 Fed. Rep. 689.

99. FEDERAL COURTS—Extradition.—Federal courts should not interfere in interstate extradition proceedings, except in cases of urgency, where the error is plain and the necessity for intervention obvious.—*In re* Strauss, U. S. C. C. of App., Second Circuit, 126 Fed. Rep. 327.

100. FIRE INSURANCE—Parol Contract.—A parol contract of insurance, made with an insurance agent representing two companies, the company to take the risk not being specified, is not enforceable.—Hartford Fire Ins. Co. v. Trimble, Ky., 78 S. W. Rep. 462.

101. FRAUD—False Representations.—One, though not intending to deceive, may be liable for a false statement of a character calculated to mislead.—Texas Cotton Products Co. v. Denney Bros., Tex., 78 S. W. Rep. 557.

102. FRAUD—Want of Knowledge.—A seller of cattle notes represented to be secured by mortgage on cattle held not liable to the purchaser for deceit, on its being subsequently discovered tha the notes were not so secured.—People's Nat. Bank v. Central Trust Co., Mo., 78 S. W. Rep. 618.

103. FRAUDULENT CONVEYANCES — Consideration as Affected by Notice of Insolvency.—A deed from an insolvent, with or without a consideration, executed under such circumstances as to charge the vendee with notice, can be set aside by creditor.—Davis v. [Culp, Tex., 78 S. W. Rep. 554.

104. FRAUDULENT CONVEYANCES—Husband and Wife. —Where husband actually owned property, title to which was in his wife, he could not, on account thereof, create indebtedness in his own favor against his wife.—Multz v. Price, 86 N. Y. Supp. 480.

105. FRAUDULENT CONVEYANCES—Rights of Creditors. —In order to enable a creditor to attack a conveyance as fraudulent, he must have a judgment or lien against the property, or must show that he has no adequate remedy at law.—Davidson v. Dockery, Mo., 78 S. W. Rep. 624.

106. GAMING—Trading Stamps.—Acts 1898, p. 93, No. 123, prohibiting the giving of trading stamps, held not constitutional as an exercise of the police power.—State v. Dodge, Vt., 56 Atl. Rep. 983.

107. GUARANTY—Construction of Bond.—A bond executed by a wholesaler of liquors to a brewing company held to cover debts and obligations incurred before, as well as after, its date.—Harvard Brewing Co. v. Sperber, 86 N. Y. Supp. 289.

108. HIGHWAYS—Unguarded Embankment.—Where bicycle rider on highway ran into puddle, and was thrown down unguarded embankment, puddle held not proximate cause as matter of law.—Hendry v. Town of North Hampton, N. H., 56 Atl. Rep. 922.

109. HOMESTEAD—Community Property.—Sale of community property by the survivor held to convey only the interest which the survivor had as an individual.—Eddy v. Bosley, Tex., 78 S. W. Rep. 565.

110. HOMESTEAD—Judgment in Favor of United States. —A judgment in favor of the United States for a fine or penalty cannot be enforced against the defendant's homestead in Virginia.—Allen v. Clark, U. S. C. C. of App., Fourth Circuit, 126 Fed. Rep. 738.

111. HOMESTEAD — Unoccupied Property. — Land on which there is no house, and which was never occupied by the owner, held not impressed with the character of a homestead.—Zollinger v. Dunnaway, Mo., 78 S. W. Rep. 666.

112. HOMICIDE—Dying Declarations.—Dying declarations do not lose their character by the fact that the party making them lived some time after making them.—State v. Brown, La., 35 So. Rep. 818.

113. INDICTMENT AND INFORMATION — Accusation. — Under the act establishing the city court of Fayetteville, if the affidavit of prosecutor is general, the accusation may charge a specific criminal act included within the offense named.—Murphy v. State, Ga., 46 S. E. Rep. 450.

114. INFANTS—Appointment of Guardian in Will Contest.—In the absence of statutory enactment to the contrary, a court in a will contest held to have inherent power to appoint a guardian *ad litem* for minors, made parties by *scire facias*.—Valle v. Sprague, Mo., 78 S. W. Rep. 609.

115. INJUNCTION—Award of Damages.—While ordinarily an award of damages is a legal remedy, courts of equity will, under special circumstances and in all proper cases, consider and settle the question of damages as incident to injunctive relief. — Reese v. Wright, Md., 56 Atl. Rep. 976.

116. INTEREST—Action on Note.—A note containing an obligation "to pay the interest annually" at 8 per cent. until paid, and interest on interest at 6 per cent. until the maturity of the note, does not draw interest on interest after maturity of the note.—Carpenter v. Rice's Adm'x, Ky., 78 S. W. Rep. 458.

117. INTOXICATING LIQUORS — Boarding Houses. — Liquor in possession of boarding house keeper, to be disposed of to boarders under an agreement with them, held "kept for sale."—State v. Wenzel, N. H., 56 Atl. Rep. 918.

118. JUDGES—Disqualification.—A member of a firm of lawyers, obtaining a judgment on a note, held, after dissolution of the firm and election as judge, not disqualified to act in a subsequent action to enforce a resulting trust in certain property held for the benefit of one of the judgment debtors. — Keeffe v. Third Nat. Bank, N. Y., 69 N. E. Rep. 593.

119. JUDGMENT—Effect of Foreclosure of Lien for Nonpayment on Action for Breach of Warranty. — A judgment foreclosing a lien on threshing machinery for nonpayment of the price held not a bar to the buyer's remedy for breach of warranty.—Standefer v. Aultman & Taylor, Mach. Co., Tex., 78 S. W. Rep. 552.

120. JUDGMENT—Opening Default.—Order permitting defendant to open his default, on condition that he give bond to secure any judgment, modified by allowing judgment previously entered to stand as security, etc.—Brickel v. Train, 86 N. Y. Supp. 292.

121. JUDGMENT — Replevin of Goods not Included.— Judgment for conversion in another state held not a bar to a replevin suit for property not alleged to have been converted in the action in the foreign state.—Levy v. Solomon, Pa., 56 Atl. Rep. 1007.

122. JUDGMENT—Restraining Enforcement of Foreign Judgment.—A bill to restrain the enforcement of a foreign judgment against complainant by default for her failure to defend the same by reason of accident and mistake held not demurrable for want of equity.—Weed v. Hunt, Vt., 56 Atl. Rep. 980.

123. JUDGMENT — Service of Summons. — Service of process on Sunday in a foreign state held no ground of objection to the judgment, where service on such day is allowed by law.—Shilling v. Seigle, Pa., 56 Atl. Rep. 957

124. JUDICIAL SALES — Confirmation. — The proper practice in case of a judicial sale is to serve on counsel the motion for decree *nisi* for confirmation, and file with the motion proof of the service, giving reasonable notice.—Coltrane v. Baltimore Building & Loan Ass'n, U. S. C. C., W. D. Va., 126 Fed. Rep. 839.

125. JURY—Competency of Juror. — One held not incompetent as a juror in a murder case because he heard part of the testimony of a witness when defendant was admitted to bail.—State v. Riddle, Mo., 78 S. W. Rep. 606.

126. JUSTICES OF THE PEACE—Subrogation.—The superior court, and not a justice of the peace, had jurisdiction of an action by a creditor seeking to be subrogated to the rights of other creditors of the same debtor, whose claims he had paid.—Fidelity & Deposit Co. v. Jordan, N. Car., 46 S. E. Rep. 496.

127. LANDLORD AND TENANT — Action for Breach of Lease.—Where a lessor terminates a lease by going into possession without the consent of the lessee, he is liable to the lessee.—Waller & Edmunds v. Cockfield, La., 35 So. Rep. 778.

128. LANDLORD AND TENANT—Assignment of Lease.— A covenant in a lease prohibiting assignment without the lessor's consent held not the equivalent of a provision that the lease shall be void in case of the lessee's bankruptcy.—*In re* Bush, U. S. D. C., D. R. I., 126 Fed. Rep. 878.

129. LANDLORD AND TENANT—Defects in Sidewalk.— Landlord held liable for defects in sidewalk to a person injured thereby.—Kirchner v. Smith, Pa., 56 Atl. Rep 947.

130. LARCENY—Possession of Stolen Goods.—Finding of stolen dress goods in the house of a man with a family held not to show exclusive possession in him, raising presumption of guilt.—State v. Drew, Mo., 78 S. W. Rep 594.

131. LIBEL AND SLANDER—Ridicule of Opinions.—An article published of an instructor in a university, ridiculing his opinions and criticisms on literary topics, is

not libelous *per se*.—Trigge v. Sun Printing & Pub. Co. 86 N. Y. Supp. 486.

132. LIFE ESTATES—Assignability of Contingent Remainder.—While contingent remainder interest in personalty is assignable in equity, it must be supported by valuable consideration.—Stallcup v. Cronley's Trustee, Ky., 78 S. W. Rep. 441.

133. LIFE INSURANCE—False Representations Concerning Policy.—In suit to avoid insurance contract, held not necessary for plaintiff to offer payment of premiums; nor could defendant be prejudiced by plaintiff's retention of binding receipt or policy.—Equitable Life Assur. Soc. v. Maverick, Tex., 78 S. W. Rep. 560.

134. MALICIOUS PROSECUTION—Excessive Levy of Attachment.—A right of action exists for malicious abuse of civil process for knowingly suing out an attachment for an amount largely in excess of that justly due, and causing the attachment of property also of much larger value.—Tamblyn v. Johnson, U. S. C. C. of App., Eighth Circuit, 126 Fed. Rep. 267.

135. MALICIOUS PROSECUTION—Limitations.—An action for malicious prosecution must be brought within six years, under the act of 1713 (1 Smith's Laws, p. 76).—Boyd v. Snyder, Pa., 56 Atl. Rep. 924.

136. MANDAMUS—Exclusion of Member from Grand Jury.—After a grand jury has been discharged, one of its members, who has been excluded from the grand jury because of his conviction of a crime, cannot be reinstated because of a pardon.—State v. Lewis, La., 35 So. Rep. 816.

137. MANDAMUS—Street Car Transfers.—Private citizen, claiming to act in behalf of public, held not entitled to peremptory mandamus requiring street railway company to issue transfers over its intersecting lines.—People v. Interurban St. Ry. Co., N. Y., 69 N. E. Rep. 596.

138. MASTER AND SERVANT—Assumed Risk.—A servant who was injured by falling into a vat of hot water which was unprotected, held to have assumed the risk of such injury.—Wilson v. Chess & Wymond Co., Ky., 78 S. W. Rep. 453.

139. MASTER AND SERVANT—Contract of Employment.—Company's discharge of salesman before expiration of term of employment must be in good faith, to exonerate company from further liability.—Atlanta Stove Works v. Hamilton, Miss., 35 So. Rep. 763.

140. MASTER AND SERVANT—Defective Machinery.—The question whether a pulley used by defendant, by the bursting of which it was allegedan employee was killed as well as the question of defendant's negligence in its use, held properly submitted to the jury under the evidence.—Wabash Screen Door Co. v. Black, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 721.

141. MASTER AND SERVANT—Expert Testimony in Personal Injury Case.—In an action for servant's injuries, expert testimony as to witness' own practice in guying up the derrick, rather than as to the usual manner of doing such work, was improper.—Parlett v. Dunn, Va., 46 S. E. Rep. 467.

142. MASTER AND SERVANT—Fellow Servants.—Consent for one employee to direct another, being merely an inference from the evidence, held not to support further inference of authority to make such directions.—Texas & P. Coal Co. v. Manning, Tex., 78 S. W. Rep. 545.

143. MASTER AND SERVANT—Unsafe Place to Work.—The right ofan employee to recover for injuries from the fall of a platform is not affected by the fact that he had equal means with his employer of knowing that it had not been safely constructed.—Pfisterer v. J. H. Peter & Co., Ky., 78 S. W. Rep. 450.

144. MASTER AND SERVANT—Who are Fellow Servants.—Tagman in quarry held fellow servant of a quarryman.—O'Neal v. Clydesdale Stone Co., Pa., 56 Atl. Rep 929.

145. MONOPOLIES—Licenses Under Patents.—Contracts of license under patents are not illegal, as against public policy, or as in violation of the anti-trust law, because of provisions intended to keep up the patent monopoly.—United States Consol. Seeded Raisin Co. v. Griffin & Skelley Co., U. S. C. C. of App., Ninth Circuit, 126 Fed. Rep. 364.

146. MORTGAGES—Foreclosure.—Mortgagee, on foreclosure, held not entitled to credits for amounts paid for taxes by its vendee of the premises.—Pollard v. American Freehold Land Mortg. Co., Ala., 35 So. Rep. 767.

147. MORTGAGES—Nonpayment of Taxes.—An extension of time to pay the principal secured by a deed of trust held not to preclude the enforcement of a provision of the deed authorizing foreclosure for nonpayment of taxes.—Clark v. Elmendorf, Tex., 78 S. W. Rep. 538.

148. MUNICIPAL CORPORATIONS—Contract with Water Company.—A contract of a city with a water company, on its face in perpetuity, and so *ultra vires*, will not be treated as one for the period for which the company is chartered.—Westminster Water Co. v. City of Westminster, Md., 56 Atl. Rep. 990.

149. MUNICIPAL CORPORATIONS—Duty to Repair Outlying Streets.—An *ultra vires* ordinance, providing for the improvement of a street without the limits of a city, held not to estop the city from denying liability for injuries sustained by defects in the sidewalk, on the ground that it was not required to improve the same.—Stealey v. Kansas City, Mo., 78 S. W. Rep. 599.

150. MUNICIPAL CORPORATIONS—Laches on Part of City Employee.—Municipal employee held to have waived right to *per diem* increase of wages by failure to protest for a period of six years.—Ryan v. City of New York, N. Y., 69 N. E. Rep. 599.

151. MUNICIPAL CORPORATIONS—Maintenance of Dump.—The maintenance of a dump for the disposition of waste materials by a city is not *per se* a nuisance.—City of Denver v. Porter, U. S. C. C. of App., Eighth Circuit, 126 Fed. Rep. 288.

152. MUNICIPAL CORPORATIONS—Negligent Maintenance of Water Pipe.—City held liable for damages caused by water pipe negligently maintained in leaky condition, although such condition was brought about by the negligence of independent contractor.—Dunstone v. City of New York, 86 N. Y. Supp. 562.

153. MUNICIPAL CORPORATIONS—Public Improvement.—Municipality held liable to the persons benefited by an improvement for the damages sustained by the failure of an improvement commission, empowered to direct the work, to complete it.—Astoria Heights Land Co. v. City of New York, 86 N. Y. Supp. 651.

154. MUNICIPAL CORPORATIONS—Special Tax Bill.—Where the president of a board of public improvements signed a special tax bill after it had been computed and written out by his clerk, the bill thereby became the act of the president, within an ordinance requiring him to compute and assess the taxes.—Heman Const. Co. v. Loevy, Mo., 78 S. W. Rep. 613.

155. MUNICIPAL CORPORATIONS—Validity of Contract for Improvements.—That a municipal contract for improvements contained an invalid alien labor clause, did not render the whole contract void as against public policy.—Doyle v. People, Ill., 69 N. E. Rep. 689.

156. NAVIGABLE WATERS—Failure to Mark Location of Sunken Vessel.—The owners of a scow sunk in a harbor held solely in fault for a collision between it and a passing steamer, on the ground that they failed to so mark the spot as to give notice of the wreck.—The Mary S. Lewis, U. S. D. C., D. Conn., 126 Fed. Rep. 848.

157. NAVIGABLE WATERS—Riparian Rights.—The title to land lying at high-water mark within the tidal waters of the state, and thence out into the sea or river, was originally in the state.—Simpson v. Moorehead, N. J., 56 Atl. Rep. 887.

158. NEGLIGENCE—Injury to Child Riding on Platform.—In action for injuries to boy on street car, held proper to withdraw the question of contributory negligence from the jury.—Parker v. Washington Electric St. Ry. Co., Pa., 56 Atl. Rep. 1001.

159. NEGLIGENCE—Reception Room Maintained by Department Store.—Where a department store maintained a reception room for women patrons accompanied by children, it was bound to keep such room reasonably free from danger to such children.—Miller v. Geo. B. Peck Dry Goods Co., Mo., 78 S. W. Rep. 682.

160. NEGLIGENCE — Riding with Negligent Driver. — Negligence of a truck driver, with whom plaintiff was driving when they collided with a street car and he was injured, held not to be imputed to him.—Robinson v. Metropolitan St. Ry. Co., 86 N. Y. Supp. 442.

161. NUISANCE—Boilermaking.—A boilermaker will be restrained from constructing his boilers in the open air next to a dwelling, so as to create a noise which in the night time and sometimes on Sundays becomes unendurable.—Froelicher v. Oswald Iron Works, La., 35 So. Rep. 821.

162. NUISANCE—Brick Manufacturing Establishment.—Brick manufacturing establishment held to constitute a nuisance.—Powell v. Brookfield Pressed Brick & Tile Mfg. Co., Mo., 78 S. W. Rep. 646.

163. PARTITION — Conveyance in Fraud of Right.—Plaintiffs in partition held to have the burden of proving they were *bona fide* purchasers, on defendant's proof of his right to the property against their grantor.—Heyman v. Swift, 86 N. Y. Supp. 584.

164. PARTNERSHIP—Accounting.—Where partner advanced money for a particular transaction, which resulted in a loss, he should be credited with the money advanced and charged with one-half the loss.—Finletter v. Baum, Pa., 56 Atl. Rep. 941.

165. PARTNERSHIP—Sale by Surviving Partner.—Sale of real estate by executor and surviving partner to himself, pursuant to arrangement with legatee of deceased partner held not invalid.—Littell v. Hackley, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 309.

166. PATENTS—Sale of Exclusive Rights.—A sale of the exclusive right to manufacture and sell a patented invention constitutes a sale of the patent right, within Gen. St. 1901, § 4357.—Pinney v. First Nat. Bank, Kan., 75 Pac. Rep. 119.

167. PENALTIES—Necessity of Conviction. — Where a statute punishes an act as a misdemeanor and also imposes a penalty, it is not necessary to obtain a conviction before suing for the penalty.—People v. Snyder, 86 N. Y. Supp. 415.

168. PERPETUITIES—Charities. — Provisions of a will directing accumulations for charitable objects for a period longer than that allowed by the rule against perpetuities are valid. — Brigham v. Peter Bent Brigham Hospital, U. S. C. C., D. Mass., 126 Fed. Rep. 796.

169. PLEADING—Verification of Answer.—In an action on a life policy, where the answer was not verified, the contract as alleged by the petition stood confessed.—Weber v. Ancient Order of Pyramids, Mo., 78 S. W. Rep. 650.

170. PRINCIPAL AND AGENT—Authority of Agent Question for Jury.—In an action to recover the price of coal, where the evidence is conflicting as to the authority of plaintiff's agent, the question is for the jury.—Williams v. Brandt, 86 N. Y. Supp. 389.

171. PRINCIPAL AND AGENT — Misappropriation by Agent.—The law making void contracts as to a business carried on in disregard of the privilege tax does not shield an agent from liability for misappropriations in the conduct thereof.—Decell v. Hazlehurst Oil Mill & Fertilizer Co., Miss., 35 So. Rep. 76.

172. PRINCIPAL AND SURETY—Burden of Proof in Action Against Surety.—The burden is on a plaintiff, suing a surety, to show that she herself has not been guilty of anything altering the surety's position, taken when he gave the undertaking.—Stendal v. Ackerman, 86 N. Y. Supp. 468.

173. PROPERTY—Second Story of Building.—The second story of a building, belonging to one other than the owner of the first story and the fee of the land, held real estate.—Madison v. Madison, Ill., 69 N. E. Rep. 625.

174. PUBLIC LANDS—Invalid Sale. — Invalid sale of lands to lessee cannot be treated as continuation of lease, though payments exceeded amount due under lease.—Burnam v. Terrell, Tex., 78 S. W. Rep. 500.

175. RAILROADS — Abutting Owners. — Consents of abutting property owners to establishment of railway route held valid, though executed before map of route is filed.—Mercer County Traction Co. v. United New Jersey R. & Canal Co., N. J., 56 Atl. Rep. 897.

176. RAILROADS — Fire Set by Locomotive. — Negligence held not actionable, unless it was the proximate cause of the injury.—Cheek v. Oak Grove Lumber Co., N. Car., 46 S. E. Rep. 488.

177. RAILROADS—Injury to Brakeman on a Siding.—The backing of a freight train upon a siding, against cars standing there, without warning by bell or whistle, held negligence as to brakeman thereon.—Southern Ry. Co. in Kentucky v. Otis' Adm'r, Ky., 78 S. W. Rep. 480.

178. RAILROADS—Reasonableness of Ordinance.—The reasonableness or necessity of an ordinance requiring railroads to conform to grade of streets at crossings held not open to question.—Houston & T. C. R. Co. v. City of Dallas, Tex., 78 S. W. Rep. 525.

179. RAILROADS—Subscription by Counties.—Demand by county against railroad for breach of trust in misappropriating subscribed funds by railroad's predecessor in interest held stale and unenforceable in equity.—Marion County v. Louisville & N. R. Co., Ky., 78 S. W. Rep. 437.

180. REAL ACTIONS—Improvements by Trespasser.—A trespasser in a petitory action may recover for such ameliorations as have added to the permanent value of the land.—Sigur v. Burguiers, La., 35 So. Rep. 823.

181. RECORDS—Cloud on Title.—A cloud on title cannot be removed on application to register the title, unless the proof of the title is sufficient to entitle the applicant to registration.—Glos v. Cessna, Ill., 69 N. E. Rep. 634.

182. SALES—Conversion of a Piano. — Plaintiff, in an action for conversion of a piano, which defendant took from H, may, to show title, introduce a conditional bill of sale to H from him. — Schleicher v. Wirth, 86 N. Y. Supp. 265.

183. SALES—Failure to Deliver on Time.—A purchaser of machinery not delivered in time held entitled to set off against the price the value of the use of the plant during the delay.—Charles E. Dustin Co. v. St. Petersburg Inv. Co., U. S. C. C., E. D. Pa., 126 Fed. Rep. 816.

184. SALES—Payment to Third Party Claiming Title.—A seller cannot sue a third party, who was paid by the buyer for the property sold and delivered, on such third party's claiming title thereto.—Martin v. Chouteau Land & Lumber Co., Mo., 78 S. W. Rep. 678.

185. SET-OFF AND COUNTERCLAIM — Insolvency.—The receiver of an insolvent bank held entitled, in a suit against an insolvent partnership, to an equitable set-off of their debt to the bank against a judgment for a deposit in the bank in the name of a partner as trustee; the firm being the real owners of the deposit.—Dubreuil v. Gaither, Md., 56 Atl. Rep. 965.

186. SPECIFIC PERFORMANCE—Agreement for Partition of Land.—The remedy on a contract, whereby tenants in common of one tract and tenants in common of another tract mutually agreed to partition all the land, is by suit for specific performance.—Sumner v. Early, N. Car., 46 S. E. Rep. 492.

187. SPECIFIC PERFORMANCE—Contract to Leave Property by Will.—Specific performance of contract to leave property to certain person at death held not defeated by will devising the property to another.—Jordan v. Abney, Tex., 78 S. W. Rep. 486.

188. SPECIFIC PERFORMANCE — Interdependent Contracts.—Specific performance of option on stock will not

be decreed at instance of purchaser, where he refused to carry out a related option of purchase of real estate.—Reynolds v. Hooker, Vt., 56 Atl. Rep. 988.

189. STREET RAILROADS—Driving on Track.—Plaintiff had a right to drive on defendant's street railway track, if in doing so he did not unnecessarily interfere with the operation of cars on the track.—Buren v. St. Louis Transit Co., Mo., 78 S. W. Rep. 680.

190. SUBROGATION — County Bonds. — *Bona fide* purchasers of void county bonds issued in payment of outstanding warrants held entitled to subrogation to the rights of the original warrant holders.—Board of Com'rs of Kearney County, Kan., v. Irvine, U. S. C. C. of App. Eighth Circuit, 126 Fed. Rep. 689.

191. SUBSCRIPTIONS—Contributing Land for Right of Way.—The promise of each of several persons signing an agreement to contribute land for a railroad right of way held a good consideration for the promise of the others.—Curry v. Kentucky Western Ry. Co., Ky., 78 S. W. Rep. 435.

192. TAXATION—Franchise Tax.— A franchise tax on the business of a corporation which has done business only 5 1-2 months should be apportioned.—People v. Miller, 86 N. Y. Supp. 420.

193. TAXATION — Over Valuation. — The testimony of assessors on appeal from the assessment is not admissible to contradict their records.—Saco Water Power Co. v. Inhabitants of Buxton, Me., 56 Atl. Rep. 914.

194. TAXATION—Registration of Title to Land.—On an application to register a title to land as a fee, the burden is on the applicant to prove a fee-simple title to the property, and that claims by defendants were invalid.—Glos v. Kingman & Co., Ill., 69 N. E. Rep. 632.

195. TELEGRAPHS AND TELEPHONES — Location of Poles.—Ordinance regulating the location of telegraph poles in a city held not to impair the right of the telegraph company to locate the poles.—City of New Castle v. Central District & Printing Telegraph Co., Pa., 56 Atl. Rep. 931.

196. TELEGRAPHS AND TELEPHONES—Mental Suffering at Common Law.—At common law damages cannot be recovered for mental suffering for a telegraph company's failure to deliver a death message, where such suffering was unaccompanied by any pecuniary loss or physical injury.—Western Union Tel. Co. v. Sklar, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 295.

197. TOWAGE—Insufficient Power of Tug.—A tug is in fault for loss and damage to her tow, resulting from her lack of sufficient power to meet conditions which should reasonably have been anticipated when she undertook the service.—The E. T. Williams, U. S. D. C., S. D. N. Y. 126 Fed. Rep. 871.

198. TRESPASS—Justification.—Herding cattle on land of another held not justified by permission of one having a lease not going into effect till after the herding.—Tucson Land & Live Stock Co. v. Everett, Tex., 78 S. W. Rep. 535.

199. TRESPASS TO TRY TITLE—Adverse Possession.—A co-tenant in remainder, in possession, held not entitled to claim title against his co-tenants by lapse of time during the continuance of the preceding estate.—Guthrie v. Guthrie, Ky., 78 S. W. Rep. 474.

200. TRESPASS TO TRY TITLE—Pleading Defenses.—In trespass to try title, plea of improvements in good faith does not deprive defendant of advantage of defense of outstanding title.—Buckner v. Vancleave, Tex., 78 S. W. Rep. 541.

201. TRIAL—Allowing Witness to Explain Testimony.—Permitting stenographer to read over testimony, and, allowing witness to explain it, held within discretion of trial court.—Equitable Life Assur. Soc. v. Maverick, Tex., 78 S. W. Rep. 560.

202. TRIAL—Objections to Questions. — An objection held sufficient to raise the question that the form of the question was not such as to confine the witness' answer within the limits of reasonable certainty.—Nassau Electric R. Co. v. Corliss, U. S. C. C. of App., Second Circuit 126 Fed. Rep. 355.

203. TRUSTS—Joint Trustees.—Where a will delegated a power to two trustees jointly, one of them had no authority to exercise the power, on the other renouncing his office.—*In re* Wilkin, 86 N. Y. Supp. 360.

204. TRUSTS—What Constitutes.—The mere fact that a wife, acting as conservatrix of the estate of her insane husband, inventories certain lots as a part of her husband's estate, does not estop her from asserting, after his death, a resulting trust in her favor as to such lots.—Madison v. Madison, Ill., 69 N. E. Rep. 625.

205. VENDOR AND PURCHASER—Option on Realty.—In a bill for specific performance of an option to sell realty, defendant held not entitled to defend on the ground that he had been defrauded in not having the facts disclosed to him.—Standard Steel Car Co. v. Stamm, Pa., 56 Atl. Rep. 954.

206. WILLS—Contest.—A will could not be adjudged invalid, on the ground that testator attempted to devise property which he did not own, or that he intended to make an equal distribution, which by the failure of title could not be rendered effectual.—Beetson v. Stoops, 86 N. Y. Supp. 332.

207. WILLS—Holographic.—Under Code 1887, § 2514, a holograph will ending, "I, William Dinning, say this is my last will and testament," was sufficiently signed by the testator to entitle it to probate.—Dinning v. Dinning, Va., 46 S. E. Rep. 473.

208. WILLS—Limitations of Estate.—A court will not cut down an estate once granted absolutely in fee by limitations contained in subsequent parts of a will, unless the intent to limit the devise is manifested clearly and unmistakably.—McClellan v. Mackenzie, U. S. C. C. of App., Sixth Circuit, 126 Fed. Rep. 701.

209. WILLS—Removal of Seal.— There is nothing for the jury, on the issue of revocation of a will by removal of the seal, when it is, on the evidence, pure speculation as to whether the seal was intentionally removed or fell off by accident. — Stevens v. Stevens, N. H., 56 Atl. Rep. 916.

210. WILLS—Setting Aside Decree.—Ignorance of legatee of rights under will until expiration of time for appeal from a decree approving a former instrument held to give the probate court no ground to set the decree aside.—Delehanty v. Pitkin, Conn., 56 Atl. Rep. 881.

211. WILLS—Universal Legacy.—Where testatrix left to her husband all her property, real, personal, movable and immovable, it was a universal legacy.—Thomas v. Blair, La., 35 So. Rep. 811.

212. WITNESSES — Action for Assault.—In an action against an officer for assaulting plaintiff's wife, evidence of the circumstances under which plaintiff pleaded guilty to an assault on the officer at the time held admissible.—McKinstry v. Collins, Vt., 56 Atl. Rep. 985.

213. WITNESSES—Advancement.—A son held not incompetent to testify as to matters occurring in his father's lifetime connected with an advancement.—*In re* Allen's Estate, Pa., 56 Atl. Rep. 928.

214. WITNESSES—Impeaching one's own Witness.—A party cannot impeach his own witness on a point on which he fails to testify; but, to authorize impeachment, the witness must testify to something injurious to the party offering him.—Smith v. State, Tex., 78 S. W. Rep. 519.

215. WITNESSES—Impeachment.—The court may allow accused to be recalled to lay foundations for his impeachment.—State v. Brown, La., 35 So. Rep. 818.

216. WITNESSES—Question of Privilege.—Where, on trial of two defendants, they desired to put another defendant, not on trial, on the stand, and he consulted with his attorney, defendants' counsel could not ask what passed between him and his counsel.—State v. Gosey, La., 35 So. Rep. 786.